

***United States Court of Appeals
for the
District of Columbia Circuit***



**TRANSCRIPT OF
RECORD**

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TRANSCRIPT OF RECORD.

Court of Appeals of the District of Columbia.

OCTOBER TERM, 1916.

No. 2942.

326

No. **5** SPECIAL CALENDAR.

LEWIS H. WEBSTER, APPELLANT,

vs.

MAURICE SPLAIN, U. S. MARSHAL IN AND FOR THE
DISTRICT OF COLUMBIA.

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF
COLUMBIA.

FILED APRIL 3, 1916.

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Court of Appeals of the District of Columbia.

OCTOBER TERM, 1916.

No. 2943.

No. 5 SPECIAL CALENDAR.

LEWIS H. WEBSTER, APPELLANT,

vs.

MAURICE SPLAIN, U. S. MARSHAL IN AND FOR THE
DISTRICT OF COLUMBIA, APPELLEE.

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF
COLUMBIA.

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Court of Appeals of the District of Columbia

No. 2943.

LEWIS H. WEBSTER, Appellant,
vs.
MAURICE SPLAIN, U. S. Marshal in and for the District of Columbia.

a Supreme Court of the District of Columbia.

No. 646, Habeas Corpus.

In re LEWIS H. WEBSTER.

UNITED STATES OF AMERICA,
District of Columbia, ss:

Be it remembered, that in the Supreme Court of the District of Columbia, at the City of Washington, in said District, at the times hereinafter mentioned, the following papers were filed and proceedings had, in the above-entitled cause, to wit:

1 *Petition for Writ of Habeas Corpus.*

Filed January 6, 1916.

In the Supreme Court of the District of Columbia.

No. 646, Habeas Corpus.

In re LEWIS H. WEBSTER.

Your petitioner, Lewis H. Webster, respectfully represents to the court as follows:

First. That he is a citizen of the United States and a resident of the State of Illinois.

Second. That he is now detained by Maurice Splain, United States Marshal in and for the District of Columbia, on a warrant issued upon alleged requisition papers, which said papers do not state any offense or do not show any cause why your petitioner should be extradited to the State of Illinois, the said papers coming from said

State but not containing any allegation sufficient to warrant your petitioner to be returned.

Your petitioner further says that the said affidavit that contains the alleged charge against your petitioner is insufficient to charge a crime under the laws of the State of Illinois; that no crime is charged in said affidavit and no facts that show a violation of any law of the State of Illinois. And that while said matter can be set up in the removal proceedings, still your petitioner is advised that he is entitled to have the decision of the court on the sufficiency of said papers, and that he is held by Maurice Splain under a warrant issued, based on said alleged charge, and that he is unlawfully held, without authority of law, and in violation of the Federal Constitution. That his removal to the said state of Illinois would be in defiance of law and in violation of the Constitutional rights of your petitioner, your petitioner not being guilty of any crime under the laws of said State, and the said requisition papers including said affidavit aforesaid not charging any violation of law. That your petitioner is not guilty of any crime, and the said papers not charging any violation of law, he is not under the Federal Constitution a fugitive from justice and should not be returned to the State of Illinois.

Wherefore, your petitioner prays that this court may immediately issue the writ of habeas corpus, returnable forthwith, requiring said United States Marshal, Maurice Splain, to produce your petitioner in court and show cause of his detention. That your petitioner upon being brought into court be discharged from such unlawful detention; and that he may have such other and further relief as the nature of this petition may require.

LEWIS H. WEBSTER.

DANIEL W. BAKER,
FREDERIC R. WHIPPLER,
Attorneys for Lewis H. Webster.

DISTRICT OF COLUMBIA, ss:

Lewis H. Webster being first duly sworn, deposes and says that he has read over the petition by him subscribed and knows the contents thereof; that the matters and things therein stated of his own knowledge are true, and those stated on information and belief he believes to be true.

LEWIS H. WEBSTER.

Subscribed and sworn to before me this 6th day of January, 1916.

J. R. YOUNG, *Clerk,*

By ALF. G. BUHRMAN, *Ass't Clk.*

3

(Endorsed.)

Let the writ issue returnable forthwith.

Jan. 6, 1915.

ASHLEY M. GOULD,
Associate Justice.

Return to Writ of Habeas Corpus.

Filed January 8, 1916.

* * * * *

The respondent, Maurice Splain, United States Marshal for the District of Columbia, upon whom the writ of habeas corpus in the above-entitled cause has been served, states that he is unable to bring into court the body of the said Lewis H. Webster, as commanded by the said writ of habeas corpus, for the reason that the said petitioner was, on the sixth day of January, 1916, admitted to bail upon order of this Honorable Court, conditioned for his future appearance before this Court.

For cause why the said Lewis H. Webster, petitioner, was taken into custody and detained by this respondent, this respondent says that the said petitioner was duly arrested by this respondent on a warrant issued by the Chief Justice of the Supreme Court of the District of Columbia, on the sixth day of January, 1916, a copy of which warrant is hereto annexed and made and prayed to be read and considered as a part hereof, in the proceedings entitled, "In Re the State of Illinois vs. L. H. Webster", Numbered 401, on the Requisition Docket of the Supreme Court of the District of Columbia, the said proceedings having been instituted upon a duly authenticated requisition from the Governor of the State of Illinois upon the Chief

4 Justice of the Supreme Court of the District of Columbia, for the surrender of said petitioner; that said requisition is based upon a valid complaint and warrant of a magistrate of the State of Illinois, charging the petitioner with the crime of unlawfully and feloniously obtaining from one Frank G. Clark, three hundred and fifty (350) one-hundred-and-forty (140) pound sacks of flour, of the value of eleven hundred and ninety dollars (\$1190.00), the personal goods, chattels and property of the said Frank G. Clark, by means and by use of the confidence game, contrary to the form of the statute in such cases made and provided, and against the Peace and Dignity of the People of the State of Illinois, for a more particular description of which said requisition and the accompanying papers, this respondent refers to and makes a part hereof, the records of the said requisition proceedings.

And having fully answered, this respondent prays that the said writ of habeas corpus may be dismissed and that he be discharged with his reasonable costs.

MAURICE SPLAIN,
United States Marshal for the District of Columbia,
By W. B. ROBISON,
Chief Deputy U. S. Marshal, District of Columbia.

JOHN E. LASKEY,
United States Attorney, D. C.

DISTRICT OF COLUMBIA, *To wit:*

I, Maurice Splain, do solemnly swear that I am the United States Marshal for the District of Columbia, and that I have read the foregoing return by me subscribed; that the statements therein made as of my personal knowledge are true, and those made upon information and belief I believe to be true.

5

MAURICE SPLAIN,
U. S. Marshal, District of Columbia,
By W. B. ROBISON,
Chief Deputy U. S. Marshal, District of Columbia.

Subscribed and sworn to before me this 7th day of January, 1916.
J. R. YOUNG, *Clk*,
By F. E. CUNNINGHAM, *Ass't Clk*.

In the Supreme Court of the District of Columbia, at Chambers, the
6th Day of January, 1916.

No. 401, Requisition Docket.

In re THE STATE OF ILLINOIS
vs.
L. H. WEBSTER.

The Governor of the State of Illinois having made Requisition upon the Chief Justice of said Court, dated the 3rd day of January, 1916, for the delivery to William J. O'Neill, Agent of said State, of L. H. Webster, a fugitive from justice, charged in the County of Cook, in said State, with the crime of Confidence Game, it is hereby ordered that a warrant be issued to the United States Marshal for the District of Columbia, commanding him to apprehend and bring the said fugitive before me forthwith, to be dealt with according to law.

J. HARRY COVINGTON,
Chief Justice.

Demurrer to Return.

Filed January 13, 1916.

* * * * *

6 The petitioner says that the return of the respondent, Maurice Splain, is bad in substance.

DANIEL W. BAKER,
FREDERIC R. WHIPPLER,
Attorneys for Petitioner.

Note.

Among the points of law to be argued at the hearing of the above demurrer are the following:

First. That the said requisition papers are not addressed to any person known under the law in the District of Columbia.

Second. That said requisition papers are not addressed to the proper officer required by law to whom they should be addressed.

Third. That the said affidavit fails to show any violation of the section under which it attempts to charge petitioner, nor does the said affidavit allege the violation of any statute of the State of Illinois, or charge the commission of any crime under any statute of the State of Illinois.

Amended Return to Writ of Habeas Corpus.

Filed January 26, 1916.

* * * * *

Pursuant to the order entered by the Court in this cause on January 15, 1916, wherein it was considered by the Court that the cause be continued until January 21, 1916, at 1:15 P. M., "to await the arrival of amended requisition papers from the Governor of the State of Illinois; the same to be filed as an amended answer to the pending petition for habeas corpus, the warrant issued in the present requisition to be treated as though issued upon the new requisition papers"; and further pursuant to the order entered by the

7 Court in this cause on January 21, 1916, "that the hearing be, and the same is hereby, continued, upon the same terms as heretofore ordered, to Friday, January 28, 1916, at 1:15 o'clock P. M.": Comes now the respondent, Maurice Splain, United States Marshal for the District of Columbia, upon whom the writ of habeas corpus in the above entitled cause was served, and states that he is unable to bring into Court the body of the said Lewis H. Webster, as commanded by the said writ of habeas corpus, for the reason that the said petitioner was, on the sixth day of January, 1916, admitted to bail upon order of this Honorable Court, conditioned for his future appearance before this Court.

For cause why the said Lewis H. Webster, petitioner, was taken into custody and detained by this respondent, this respondent says that the said petitioner was duly arrested by this respondent on a warrant issued by the Chief Justice of the Supreme Court of the District of Columbia, on the sixth day of January, 1916, a copy of which warrant is hereto annexed and made and prayed to be read and considered as a part hereof, in the proceedings entitled "In Re the State of Illinois vs. L. H. Webster," Numbered 401, on the Requisition Docket of the Supreme Court of the District of Columbia, the said proceedings having been instituted upon a duly authenticated requisition from the Governor of the State of Illinois upon the Chief Justice of the District of Columbia, for the surrender of said petitioner.

The said respondent, Maurice Splain further says that there have now been filed and are of record in this cause, amended requisition papers duly authenticated under date of January 22, 1916, made

8 by the Governor of the State of Illinois upon the Chief Justice of the Supreme Court of the District of Columbia, for the surrender of the said petitioner; that said requisition is based upon a valid complaint and warrant of a magistrate of the State of Illinois, charging the petitioner with the crime of unlawfully and feloniously obtaining from one Frank G. Clark, three hundred and fifty (350) one-hundred-and-forty (140) pound sacks of flour, of the value of eleven hundred and ninety dollars (\$1190.00), the personal goods, chattels and property of the said Frank G. Clark, by means and by use of the confidence game, contrary to the form of the statute in such cases made and provided, and against the Peace and Dignity of the People of the State of Illinois, for a more particular description of which said amended requisition and the accompanying papers, this respondent refers to and makes a part hereof the records of the said requisition proceedings, which include the said duly authenticated amended requisition and accompanying papers of the Governor of the State of Illinois upon the Chief Justice of the Supreme Court of the District of Columbia, dated January 22, 1916.

And having fully answered, this respondent prays that said writ of habeas corpus may be dismissed and that he be discharged with his reasonable costs.

MAURICE SPLAIN,
United States Marshal for the District of Columbia.

JOHN E. LASKEY,
United States Attorney, D. C.

DISTRICT OF COLUMBIA, *To wit:*

I, Maurice Splain, do solemnly swear that I am the United States Marshal for the District of Columbia, and that I have read the foregoing return by me subscribed; that the statements therein
9 made as of my personal knowledge are true, and those made upon information and belief I believe to be true.

MAURICE SPLAIN.

Subscribed and sworn to before me this 26th day of January, 1916.
[SEAL.] JOHN R. YOUNG, *Clerk.*

In the Supreme Court of the District of Columbia, at Chambers, the
6th Day of January, 1916.

No. 646, Requisition Docket.

In re THE STATE OF ILLINOIS
vs.
L. H. WEBSTER.

The Governor of the State of Illinois having made Requisition upon the Chief Justice of said Court, dated the 3rd day of January, 1916, for the delivery to William J. O'Neill, Agent of said State, of

L. H. Webster, a fugitive from justice, charged in the County of Cook, in said State, with the crime of Confidence Game, it is hereby ordered that a warrant be issued to the United States Marshal for the District of Columbia, commanding him to apprehend and bring the said fugitive before me forthwith, to be dealt with according to law.

J. HARRY COVINGTON,
Chief Justice.

Demurrer to Amended Return.

Filed January 28, 1916.

* * * * *

The petitioner says that the amended return and original return are bad in substance.

DANIEL W. BAKER,
FREDERIC R. WHIPPLER,
Attorneys for Petitioner.

10 Among the points of law to be argued at the hearing of this cause are the following:

First. That the said original and amended returns fail to show that petitioner is guilty of any offense in violation of the laws of Illinois, upon which he can be extradited.

Second. That the affidavit relied upon by the respondents as setting up a charge, fails to state facts sufficient to show to the court any offense in violation of the laws of the State of Illinois.

Third. That the said affidavit accompanying said extradition papers, called the affidavit in aid of extradition, shows affirmatively that petitioner has not violated any law of the State of Illinois.

Order.

Filed January 28, 1916.

* * * * *

This cause coming on to be heard on the return to the writ of habeas corpus heretofore issued, and the demurrer to the return, filed on behalf of the petitioner, and the amended return to the writ of habeas corpus, and the demurrer to the amended return, filed on behalf of the petitioner, and the same having been argued by counsel and considered by the court, and it appearing to the court by the amended return that a valid requisition has been duly made by the Governor of the State of Illinois upon the Chief Justice of the Supreme Court of the District of Columbia, and that the discharge of the petitioner, Lewis H. Webster, would have no other effect than to occasion the rearrest of said petitioner upon the requisition last referred to, whereupon it would be the duty of the court to remand the petitioner, it is, by the court, this twenty-eighth day of
11 January, 1916, ordered, adjudged, and decreed that the said demurrers in this cause be, and the same are hereby, over-

ruled, and the said petitioner, Lewis H. Webster, be, and he hereby is, remanded to the custody of the Marshal of the District of Columbia, and the said petition for habeas corpus dismissed.

ASHLEY M. GOULD, *Justice*.

From the foregoing order, the petitioner, Lewis H. Webster, in open court, notes an appeal to the Court of Appeals of the District of Columbia, and on motion of counsel for petitioner, the court fixed the amount of bail pending appeal at the sum of two thousand dollars, and the penalty of the bond for costs at one hundred dollars (\$100), petitioner to have leave to deposit fifty dollars (\$50), in cash, in lieu of the bond for costs.

ASHLEY M. GOULD, *Justice*.

Memorandum.

February 17, 1916.—Appeal bond for costs \$100 approved and filed.

Assignment of Errors.

Filed March 21, 1916.

* * * * *

First. The Court erred in not sustaining the demurrer of petitioner to the returns of respondent.

Second. The Court erred in not discharging the petitioner.

Third. The Court erred in remanding the petitioner to the custody of respondent.

12 Fourth. The Court erred in refusing to consider the facts contained in affidavit in aid of extradition which affidavit is part of the return of respondent.

DANIEL W. BAKER,
FREDERIC R. WHIPPLER,
Attorneys for Petitioner.

Designation of Record.

Filed March 21, 1916.

* * * * *

1st. Petition for Writ of Habeas Corpus filed Jan. 6, 1916.

2nd. Return to Writ, filed Jan. 8, 1916.

3rd. Demurrer to Return, filed Jan. 13, 1916.

4th. Amended return to Writ, filed Jan. 26, 1916.

5th. Demurrer to Amended Return, filed Jan. 28, 1916.

6th. Order, filed Jan. 28, 1916.

7th. Memo. of Appeal, filed Jan. 28, 1916.

8th. Memo. of bond, filed Feb. 17, 1916.

8½. Assignment of Errors.

9th. This designation.

DANIEL W. BAKER,
FREDERIC R. WHIPPLER,
Attorneys for Petitioner.

13 Supreme Court of the District of Columbia.

UNITED STATES OF AMERICA,
District of Columbia, ss:

I, John R. Young, Clerk of the Supreme Court of the District of Columbia, hereby certify the foregoing pages numbered from 1 to 12, both inclusive, to be a true and correct transcript of the record, according to directions of counsel herein filed, copy of which is made part of this transcript, in the case entitled In Re: Lewis H. Webster, Habeas Corpus No. 646, as the same remains upon the files and of record in said Court.

In testimony whereof, I hereunto subscribe my name and affix the seal of said Court, at the City of Washington, in said District, this 27th day of March, 1916.

[Seal Supreme Court of the District of Columbia.]

JOHN R. YOUNG, *Clerk.*

Endorsed on cover: District of Columbia Supreme Court. No. 2943. Lewis H. Webster, appellant, vs. Maurice Splain, U. S. Marshal in and for the District of Columbia. Court of Appeals, District of Columbia. Filed Apr. 3, 1916. Henry W. Hodges, clerk.

ADDITION TO RECORD PER STIPULATION OF COUNSEL.

Court of Appeals of the District of Columbia.

OCTOBER TERM, 1916.

No. 2943.

No. 5, SPECIAL CALENDAR.

LEWIS H. WEBSTER, APPELLANT,

vs.

MAURICE SPLAIN, U. S. MARSHAL IN AND FOR THE
DISTRICT OF COLUMBIA.

FILED SEPTEMBER 22, 1916.

Supreme Court of the District of Columbia.

UNITED STATES OF AMERICA,
District of Columbia, ss:

I, John R. Young, Clerk of the Supreme Court of the District of Columbia, hereby certify the foregoing to be true and correct copies of amended requisition papers filed in Re State of Illinois vs. Lewis H. Webster, No. 401, as the same remain upon the files and of record in said Court.

In testimony whereof, I hereunto subscribe my name and affix the seal of said Court, at the City of Washington, in said District, this 8th day of September, 1916.

[Seal Supreme Court of the District of Columbia.]

JOHN R. YOUNG, *Clerk.*

Amended Requisition.

Filed January 24, 1916.

STATE OF ILLINOIS,
Executive Department:

The Governor of the State of Illinois to all to whom these presents shall come, Greeting:

Know ye, That I have authorized and empowered and by these Presents do authorize and empower William J. O'Neill as messenger and agent on the part of this State to take and receive from the proper authorities of District of Columbia L. H. Webster who is a fugitive from justice, and convey him to the State of Illinois, there to be dealt with according to Law.

In witness whereof, I have hereunto set my hand and caused to be affixed the Great Seal of State, at the Capitol in the City of Springfield, this 22d day of Jan. A. D. 1916.

[SEAL.]

E. F. DUNNE.

By the Governor.
 LEWIS G. STEVENSON,
Secretary of State.

STATE OF ILLINOIS,
Executive Department:

The Governor of the State of Illinois to the Chief Justice of the Supreme Court of the District of Columbia:

Whereas, It appears by the papers required by the Statutes of the United States which are hereunto annexed, and which I certify to be authentic and duly authenticated in accordance with the Laws of this State, that L. H. Webster stands charged with the crime of confidence game which I certify to be a crime under the Laws of this State, committed in the County of Cook in this State and it having been represented to me that he has fled from the justice of this State and has taken refuge in the District of Columbia.

Now Therefore, pursuant to the provisions of the Constitution and the Laws of the United States in such cases made and provided, I do hereby require that the said L. H. Webster be apprehended and delivered to William J. O'Neill who is hereby authorized to receive and convey him to the State of Illinois, there to be dealt with according to Law.

In witness whereof, I have hereunto set my hand and caused to be affixed the Great Seal of State, at the Capitol in the City of Springfield, this 22d day of Jan. A. D. 1916.

[SEAL.]

E. F. DUNNE.

By the Governor.
 LEWIS G. STEVENSON,
Secretary of State.

To His Excellency, Edward F. Dunne, Governor of Illinois:

Your petitioner, State's Attorney for the County of Cook State of Illinois, would represent unto your Excellency that L. H. Webster stands charged by the accompanying certified copy of complaint, warrant and affidavit with the crime of Confidence Game committed in the County of Cook and State of Illinois, on or about the 17th day of December 1915.

That on, or about the 17th of December 1915, the said L. H. Webster fled from the State of Illinois, and is now, as your petitioner verily believes, in the City of Washington, District of Columbia, fugitive from the justice of this State, and the grounds of such belief are as follows:

Telegram from Raymond W. Pullman, Major and Supt. of Police, Washington, D. C. that the said L. H. Webster is now in custody there.

Wherefore, your petitioner prays that a requisition may issue upon the Chief Justice of the Supreme Court of the District of Columbia, Washington, D. C. and that William J. O'Neill of the city of Chicago County of Cook and State of Illinois, may be appointed Messenger of the State of Illinois, to go after, receive and return the said fugitive to the County of Cook, State of Illinois, for trial.

Your petitioner further certifies that in his opinion the ends of public justice require that the said L. H. Webster be brought to this State for trial at the public expense, that he believes he has sufficient evidence to secure his or her conviction.

MACKY HAYNE,
State's Attorney for Cook County, Ill.

I, Frank G. Clark first being duly sworn, do solemnly declare that the facts set forth in the foregoing petition are true, and that a requisition for the above named fugitive is not sought for the purpose of collecting a debt, to allow any person to travel at the expense of the State, or to answer any private end whatever, and shall not be used for any of said objects.

FRANK G. CLARK.

Subscribed and sworn to before me this 21st day of January, 1916.

[SEAL.]

FRANK J. WALSH,
*Clerk of the Criminal Court, Cook
County, State of Illinois.*

I, John H. Williams, acting County Judge of Cook County, State of Illinois, do hereby certify that the ends of justice require the return of L. H. Webster.

JOHN H. WILLIAMS,
Acting County Judge.

(Note.)

N. B.—Requisitions will not be issued on petitions alone. The petition must, in all cases, be accompanied by a certified copy of an

indictment found against the fugitive, or, in the absence of an indictment, a certified copy of a complaint made before and on file in the office of a magistrate, charging the fugitive with a crime. The petition and all other papers presented in connection with an application for a requisition must be in duplicate. The Secretary of State's fees, \$2.00, for issuing requisition, should accompany the petition.

The Municipal Court.

Complaint for Examination.

In the Municipal Court of Chicago.

STATE OF ILLINOIS,
City of Chicago, ss:

Frank G. Clark, of 160 W. Jackson Boul. Street, Chicago, Ill., complains to Arnold Heap one of the Judges of The Municipal Court of Chicago, and being duly sworn and examined on oath, states that L. H. Webster did on the 17th day of December, A. D. 1915, at the City of Chicago in the County aforesaid unlawfully and feloniously did obtain from Frank G. Clark, this complainant 350 140 pound sacks of flour of the value of Eleven Hundred and Ninety and no/100 (\$1190.00) Dollars, the personal goods chattels and property of the said Frank G. Clark, by means and by use of the confidence game, contrary to the form of the statute in such cases made and provided and against the Peace and Dignity of the people of the State of Illinois.

This complainant further says that he has just and reasonable grounds to believe and does believe that said L. H. Webster committed said offense.

Wherefore, the said Frank G. Clark prays a warrant may issue against the said L. H. Webster according to law.

FRANK G. CLARK.

Subscribed and sworn to before me this 30th day of December A. D. 1915.

ARNOLD HEAP,
Judge of the Municipal Court of Chicago.

I have examined the within complaint and the complainant and am satisfied that there is probable cause for filing the same. Leave is hereby granted to file it, and it is ordered that a warrant issue against the accused.

Bail fixed at \$3,000.

ARNOLD HEAP,
Judge of the Municipal Court of Chicago.

The Municipal Court of Chicago.

Warrant for Examination.

STATE OF ILLINOIS,
City of Chicago, ss:

In the Municipal Court of Chicago.

THE PEOPLE OF THE STATE OF ILLINOIS

vs.

L. H. WEBSTER.

The People of the State of Illinois to the Bailiff of the Municipal Court of Chicago, and to all Sheriffs, Coroners, and Constables within said State, and to all Police Officers of the City of Chicago, Greeting:

Whereas, Frank G. Clark, has this day made complaint under oath before Hon. Arnold Heap one of the Judges of The Municipal Court of Chicago, which complaint has been filed with the undersigned Clerk of said Court, and the Court having this day examined under oath said complainant and read the complaint filed herein, and it appearing to the Court that the offense of confidence game has been committed in the City of Chicago, in the State aforesaid, contrary to the form of the statute in such case made and provided, and the Court having found that there is probable cause for believing that L. H. Webster — guilty of said offense, and the Court having ordered that a warrant issue out of this Court for the arrest of said L. H. Webster.

We, therefore, command you, forthwith to take the person of said L. H. Webster and him safely keep, so that you may have his body instanter before The Municipal Court of Chicago, in Branch 27 at 625 So. Clark St. to answer to the People of the State of Illinois for and concerning said crime and to be dealt with according to law, and have you then and there this writ with an endorsement thereon as to the manner in which you may execute the same.

Witness, Frank P. Danisch, Clerk of said Court, and the seal thereof, at Chicago aforesaid, this 30th day of December A. D. 1915.

[SEAL.]

FRANK P. DANISCH,

Clerk of the Municipal Court of Chicago.

Authentication for Extradition.

Municipal Court.

STATE OF ILLINOIS,
City of Chicago, ss:

I, Frank P. Danisch, Clerk of The Municipal Court of Chicago, the same being a court of record in said city and state, do hereby certify the above and foregoing to be true, perfect and complete copies, respectively, of a complaint sworn to before the Honorable Arnold

Heap, one of the Judges of The Municipal Court of Chicago, and now on file in my office, and a warrant issued by me pursuant to the order of said court in a certain cause now pending in said court in which the People of the State of Illinois are plaintiffs and L. H. Webster is defendant. And I further certify that said Arnold Heap was, on the day said complaint and warrant bear date, and now is, one of the duly elected, commissioned and qualified Judges of said court and authorized by law to administer oaths, and that as such full faith and credit are due to all his official acts as such in all courts of record and elsewhere.

Witness my hand and the seal of said court this 21st day of January, A. D. 1916.

[SEAL.]

FRANK P. DANISCH,
Clerk of the Municipal Court of Chicago.

UNITED STATES OF AMERICA,
State of Illinois, City of Chicago, ss:

I, Harry Olson, Chief Justice of The Municipal Court of Chicago, in said city and state do hereby certify that Frank P. Danisch, whose name is subscribed to the above certificate of attestation, now is, and was at the time of signing and sealing the same, the Clerk of The Municipal Court of Chicago and Keeper of the Records and Seal thereof, duly elected and qualified to office; that full faith and credit are due all his official acts as such in all Courts of Record in the United States and elsewhere; and, further, that his attestation is in due form of law and by the proper officer.

Given under my hand at my Chambers in Chicago this 21st day of Jan., A. D. 1916.

HARRY OLSON, [SEAL.]
Chief Justice of the Municipal Court of Chicago.

STATE OF ILLINOIS,
City of Chicago, ss:

I, Frank P. Danisch, Clerk of The Municipal Court of Chicago, in said city and state, do hereby certify that the Honorable Harry Olson, whose name is subscribed to the above certificate of attestation, now is, and was at the time of signing and sealing the same, Chief Justice of The Municipal Court of Chicago, and was duly elected, commissioned and qualified to office; that full faith and credit are due all his official acts as such in all Courts of Record in the United States and elsewhere; and that his attestation is in due form of law and by the proper officer.

Given under my hand and the seal of said court, at Chicago, this 21st day of January, A. D. 1916.

[SEAL.]

FRANK P. DANISCH,
Clerk of the Municipal Court of Chicago.

STATE OF ILLINOIS,
 County of Cook,
 City of Chicago, ss:

In the Municipal Court of Chicago.

PEOPLE OF THE STATE OF ILLINOIS
 vs.
 L. H. WEBSTER.

Confidence Game.

*Affidavit in Aid of Extradition of the Above Named Defendant,
 Fugitive from Justice.*

Frank G. Clark, being first duly sworn, on his oath deposes and says that he is a resident of the City of Chicago, County of Cook and State of Illinois, and has been such resident for the past thirty-nine years.

Affiant further says that he knows of his own knowledge that on the 17th day of December, 1915, the said defendant, L. H. Webster, says that he is a resident of the City of Chicago, County of Cook and State of Illinois.

Affiant further says that prior to the 1st day of June, 1915, he became acquainted with one Edward L. Tatem; that at that time this affiant was conducting a wholesale flour business in the City of Chicago as Frank G. Clark; that about the 1st day of June, A. D. 1915, he became acquainted with the said Tatem, and at that time employed him as a flour salesman, on a commission basis; that during his employment on a commission basis the said Tatem made but one sale for this affiant; that on or about the 15th day of July, 1915, the said Tatem introduced to this affiant the said defendant, L. H. Webster, with whom, said Tatem explained to this affiant, he, said Tatem, was desirous of entering into the flour brokerage business under the name of L. H. Webster & Company, and that said Tatem and said defendant, Webster, at that time represented to this affiant that said Webster was a man of considerable means, and that he owned a large amount of property in the east, when in truth and in fact said Webster did not own the said property.

Affiant further states that at the same time and place it was also represented to him by the said Tatem that he was also the owner of a large amount of property in the east, and that this affiant would be fully protected for any sales made by him to them; that in pursuance of such representations this affiant sold and delivered to the said Tatem and said defendant, Webster, doing business as L. H. Webster & Company, several shipments of flour, with the understanding that same was to be paid for upon payment to them, said Tatem, and said Webster, by the bakers to whom they sold it; that the said Tatem and said Webster, intending thereby to cheat and defraud this affiant, thereby obtained his confidence, and that from a period beginning the 22nd day of September, 1915, the defendant, Webster, and said

Tatem ordered a large quantity of flour for delivery to bakers throughout the City of Chicago; that demands were made by this affiant from time to time for the payment of said flour, after the delivery of each sale, and he was informed by said Tatem and said Webster that the flour had not been paid for, and that immediately upon receipt of payment therefor this affiant would be paid in full, when in truth and in fact the said money had been collected and the representations made by said defendant, Webster, and said Tatem were false.

Affiant further states that after the defendant, Webster, and said Tatem had obtained from him large shipments of flour to the value of about \$9,000.00, they represented that certain property of the defendant and said Tatem would be converted into cash and the account immediately paid, that the flour had been collected for and the money converted to the use of the said defendant and the said Tatem; that on the 17th day of December, 1915, the defendant and the said Tatem, by means and use of the confidence game, at the City of Chicago aforesaid, obtained from this affiant 350 140-pound sacks of flour of the value of \$1,190.00, the personal goods, chattels and property of the said Frank G. Clark; that said flour was delivered by the defendant and said Tatem to Nuti & Company, of the City of Chicago, for which flour the said Nuti & Company paid to the said defendant and said Tatem the sum of \$1,190.00; that on the 27th day of December, 1915, this affiant called upon the said defendant and said Tatem, and was told by them that they had not received any money in payment of the flour delivered on the 17th day of December, nor had they received payment for any flour that they had not turned over to this affiant, when in truth and in fact the said defendant and the said Tatem had collected some \$9,000.00 which they had fraudulently withheld from this affiant.

Affiant further says that the said defendant and said Tatem obtained his confidence by misrepresenting their financial standing, and by leading this affiant to believe that they possessed certain property which in truth they did not possess, and by falsely stating that the flour delivered to them by this affiant had not been paid for.

Affiant further states that before the delivery of the said 350 140-pound jute sacks of flour, said Tatem told this affiant that the certain property of the defendant, Webster, and said Tatem had been converted into cash, and that the money was being brought to Chicago by the wife of said Webster, and would be deposited in a Chicago bank to the credit of this affiant, upon which representation the said flour was delivered.

Affiant further states that on the 27th day of December, 1915, said Webster notified him that some \$4,500 had been brought from New York by the defendant Webster's wife as the proceeds of the sale of the defendant's property in the east, and that as soon as the check was cleared this affiant would be paid in full; when in truth and in fact no money was brought from New York by the said Webster's wife, and the statement made by said Webster was false, and that the defendant Webster knew the same to be false.

Affiant further states that in pursuance of their intention to cheat and defraud this affiant by means of the confidence game, the said

Tatem and said defendant, Webster, on Tuesday, the 28th day of December, 1915, appeared at the Lake View Trust & Savings Bank, in the City of Chicago, and there withdrew several thousand dollars in cash, and fled from the jurisdiction of this State.

Affiant further states that he is informed and believes that the defendant, Webster, is now under arrest in the City of Washington, D. C.

Affiant further says that this prosecution is not brought for the purpose of allowing anyone to ride free at the expense of the State, nor to collect any debt, nor for any private purpose whatsoever, but is bona fide in every respect, and is brought only for the purpose of returning the said defendant to the State of Illinois for the purpose of prosecuting him for the offense herein charged, and that when the said defendant is returned to the City of Chicago, County of Cook and State of Illinois, this affiant will appear in the Municipal Court of Chicago to testify against him, said defendant, in the proceeding therein pending against him, as will more fully appear from the attached copy of complaint and warrant, which are hereby made a part of this affidavit.

FRANK G. CLARK.

STATE OF ILLINOIS,
County of Cook, ss:

Frank G. Clark, being first duly sworn, deposes and says that he has read the foregoing affidavit by him subscribed, and knows the contents thereof, and that the same is true in substance and in fact, except as to the matters therein stated to be upon information and belief, and as to those matters he verily believes it to be true.

FRANK G. CLARK.

Subscribed and sworn to before me this 21st day of January, A. D. 1916.

FRANK J. WALSH, [SEAL.]
*Clerk of the Criminal Court, Cook
County, State of Illinois.*

In the Court of Appeals of the District of Columbia.

No. 2943. Special Calendar, No. 5.

LEWIS H. WEBSTER, Appellant,

vs.

MAURICE SPLAIN, U. S. Marshal in and for the District of Columbia.

Stipulation.

It appearing that in making up the record in the above entitled cause there was omitted from the record the amended requisition papers filed in In Re State of Illinois vs. Lewis H. Webster, No. 401,

which said amended requisition papers were made a part of the return of the Marshal and used at the hearing in the Supreme Court of the District of Columbia, it is hereby stipulated by and between the counsel for appellant and appellee that instead of applying for a Writ of Certiorari to have said record amended so as to include said requisition papers, they shall be prepared and duly authenticated by the Clerk of the Supreme Court of the District of Columbia and filed in the Court of Appeals as part of the record in this cause.

DANIEL W. BAKER,
FREDERIC R. WHIPPLER,
Attorneys for Appellant.

M. C. VAN FLEET,
JAMES B. ARCHER,
Attorneys for Appellee.

[Endorsed:] No. 2943, Special Calendar, No. 5. Lewis H. Webster, Appellant, vs. Maurice Splain, U. S. Marshal for the District of Columbia. Addition to Record per Stipulation of Counsel. Court of Appeals, District of Columbia. Filed Sep. 22, 1916. Henry W. Hodges, Clerk. Daniel W. Baker, Attorney and Counsellor at Law, 410 Fifth Street N. W., Washington, D. C.

IN THE
Court of Appeals, District of Columbia
DISTRICT OF COLUMBIA
OCTOBER TERM, 1916. FILED

OCT 2 - 1916

No. 2943.

Henry W. Hodges
Clerk

No. 5, SPECIAL CALENDAR.

LEWIS H. WEBSTER, *Appellant*,

vs.

MAURICE SPLAIN, U. S. MARSHAL IN AND FOR THE DIS-
TRICT OF COLUMBIA.

BRIEF FOR APPELLANT.

DANIEL W. BAKER,
FREDERIC R. WHIPPLER,
Attorneys for Appellant.

IN THE

Court of Appeals, District of Columbia

OCTOBER TERM, 1916.

No. 2943.

No. 5, SPECIAL CALENDAR.

LEWIS H. WEBSTER, *Appellant*,

vs.

MAURICE SPLAIN, U. S. MARSHAL IN AND FOR THE DISTRICT OF COLUMBIA.

BRIEF FOR APPELLANT.

STATEMENT OF THE CASE.

The appellant Lewis H. Webster sued out a Writ of Habeas Corpus in the Supreme Court of the District of Columbia, and in his petition stated that he was detained by

the appellee Maurice Splain, United States Marshal in and for the District of Columbia on a warrant issued on alleged requisition papers from the State of Illinois, which said papers did not state any offense or do not show any cause why petitioner should be extradited to the State of Illinois, that an affidavit accompanied said petition and containing the alleged charge against your petitioner is insufficient to charge a crime under the laws of the State of Illinois; and that no crime is charged in said affidavit, and no facts that show a violation of any law of the State of Illinois. That your petitioner is unlawfully held without authority of law, and in violation of the Federal Constitution, that the requisition papers included the said affidavit not charging any violation of the law, and your petitioner not being guilty of any crime, he is not a fugitive from justice and should not be returned to the State of Illinois.

In answer to this petition the appellee Maurice Splain filed a return making the requisition papers part of the return. The first requisition papers were not sufficient, and thereupon an adjournment was had to January 26, 1916, and respondent then filed the return setting forth amended requisition papers, and to this return a demurrer was filed, and the demurrer overruled and appellant standing on his demurrer, an order was made in which the court held that a valid requisition had been made by the Governor of the State of Illinois and remanded the petitioner to the custody of the Marshall and dismissed the petition for Writ of Habeas Corpus, and an appeal from this was taken to this court.

In making up the record a mistake was made in not having the requisition papers brought to this court, and by stipulation they were brought here and are part of the record. The papers stated that L. H. Webster stood charged with the crime of "Confidence Game," which the Governor of

the State of Illinois certified to be a crime under the laws of that state. The complaint for examination is on page four of the additional record, and the warrant for examination is on page five of the same record, and the petition of the state's attorney is on page three. The petition to the Governor merely recites that Webster stands charged by the accompanying certified copy of complaint and warrant aforesaid with the crime of confidence game committed in the County of Cook, State of Illinois on the 17th day of December, 1915. The complaint in the additional record, page 4, stated that Webster on the said 17th day of December, 1915, in the city of Chicago, State of Illinois, unlawfully and feloniously did obtain from Frank G. Clark, this complainant, 350 140-pound sacks of flour of the value of Eleven Hundred and Ninety Dollars (\$1,190.00), the personal goods and chattels and property of the said Frank G. Clark, by means and by use of the confidence game, contrary to the form of the statute in such cases made and provided, and is signed by the Clerk of the Municipal Court of Chicago, and accompanying and part of the papers is the affidavit in aid of extradition, which affidavit recites the offense expected to be proved against appellant. These facts are as follows:

Affiant further says that prior to the 1st day of June, 1915, he became acquainted with one Edward L. Tatem; that at that time this affiant was conducting a wholesale flour business in the City of Chicago as Frank G. Clark; that about the 1st day of June, A. D., 1915, he became acquainted with the said Tatem, and at that time employed him as a flour salesman, on a commission basis; that during his employment on a commission basis the said Tatem made but one sale for this affiant; that on or about the 15th day of July, 1915, the said Tatem introduced to this affiant the said defendant, L. H. Webster, with whom, said Tatem explained to this

affiant, he, said Tatem, was desirous of entering into the flour brokerage business under the name of L. H. Webster & Company, and that said Tatem and said defendant, Webster, at that time represented to this affiant that said Webster was a man of considerable means, and that he owned a large amount of property in the East, when in truth and in fact said Webster did not own the said property.

Affiant further states that at the same time and place it was also represented to him by the said Tatem that he was also the owner of a large amount of property in the East, and that this affiant would be fully protected for any sales made by him to them; that in pursuance of such representations this affiant sold and delivered to the said Tatem and said defendant, Webster, doing business as L. H. Webster & Company, several shipments of flour, with the understanding that same was to be paid for upon payment to them, said Tatem, and said Webster, by the bakers to whom they sold it; that the the said Tatem and said Webster, intending thereby to cheat and defraud this affiant, thereby obtained his confidence, and that from a period beginning the 22d day of September, 1915, the defendant, Webster, and said Tatem ordered a large quantity of flour for delivery to bakers throughout the City of Chicago; that demands were made by this affiant from time to time for the payment of said flour, after the delivery of each sale, and he was informed by said Tatem and said Webster that the flour had not been paid for, and that immediately upon receipt of payment therefor this affiant would be paid in full, when in truth and in fact the said money had been collected and the representations made by said defendant, Webster, and said Tatem were false.

Affiant further states that after the defendant, Webster, and said Tatem had obtained from him large shipments of flour to the value of about \$9,000.00, they represented that certain property of the defendant and said Tatem would be converted into cash and the account immediately paid, that the flour had been col-

lected for and the money converted to the use of the said defendant and the said Tatem; that on the 17th day of December, 1915, the defendant and the said Tatem, by means and use of the confidence game, at the City of Chicago aforesaid, obtained from this affiant 350 140-pound sacks of flour of the value of \$1,190.00, the personal goods, chattels and property of the said Frank G. Clark; that said flour was delivered by the defendant and said Tatem to Nuti & Company, of the City of Chicago, for which flour the said Nuti & Company paid to the said defendant and said Tatem the sum of \$1,190.00; that on the 27th day of December, 1915, this affiant called upon the said defendant and said Tatem, and was told by them that they had not received any money in payment of the flour delivered on the 17th day of December, nor had they received payment for any flour that they had not turned over to this affiant, when in truth and in fact the said defendant and the said Tatem had collected some \$9,000.00 which they had fraudulently withheld from this affiant.

Affiant further says that the said defendant and said Tatem obtained his confidence by misrepresenting their financial standing, and by leading this affiant to believe that they possessed certain property which in truth they did not possess, and by falsely stating that the flour delivered to them by this affiant had not been paid for.

Affiant further states that before the delivery of the said 350 140-pound jute sacks of flour, said Tatem told this affiant that the certain property of the defendant, Webster, and said Tatem had been converted into cash, and that the money was being brought to Chicago by the wife of said Webster, and would be deposited in a Chicago bank to the credit of this affiant, upon which representation the said flour was delivered.

Affiant further states that on the 27th day of December, 1915, said Webster notified him that some \$4,500 had been brought from New York by the defendant Webster's wife as the proceeds of the sale of the de-

fendant's property in the East, and that as soon as the check was cleared this affiant would be paid in full; when in truth and in fact no money was brought from New York by the said Webster's wife, and the statement made by said Webster was false, and that the defendant Webster knew the same to be false.

Affiant further states that in pursuance of their intention to cheat and defraud this affiant by means of the confidence game, the said Tatem and said defendant, Webster, on Tuesday, the 28th day of December, 1915, appeared at the Lake View Trust & Savings Bank, in the City of Chicago, and there withdrew several thousand dollars in cash, and fled from the jurisdiction of this State.

It will be noticed that in the affidavit setting out the actions of Webster certain facts are alleged to have occurred on the 27th of December, 1915, and on the 28th of December, 1915, while the obtaining of the credit for the flour was the 17th day of December, 1915.

The requisition papers being made part of the return and the affidavit being part of the requisition papers and stating the facts on which it is relied to make Webster guilty of the crime of confidence game, a demurrer was filed to the return, which demurrer stated among other things that the original and amended return fails to show that petitioner is guilty of any offense in violation of the laws of Illinois, that the affidavit relied upon by the respondent setting up a charge, fails to state facts sufficient to show to the court any offense in violation of the laws of the State of Illinois; and that the said affidavit accompanying said extradition papers, called the affidavit in aid of extradition, show affirmatively that petitioner has not violated any law of the State of Illinois. The court overruled this demurrer and remanded petitioner and dismissed the Writ of Habeas Corpus, and an appeal was taken to this court and errors filed on March 21,

1916, and the cause comes now to this court on hearing of the errors.

SPECIFICATION OF ERRORS.

First: The court erred in not sustaining the demurrer of petitioner to the returns of the respondent.

Second: The court erred in not discharging the petitioner.

Third: The court erred in remanding the petitioner to the custody of the respondent.

Fourth: The court erred in refusing to consider the facts contained in the affidavit in aid of extradition, which affidavit is part of the return of the respondent.

Fifth: The court erred in holding said extradition papers valid.

ARGUMENT.

The only question involved is the question of the validity of the extradition papers. As these papers are relied upon as the basis for the holding of the appellant and returning him to the State of Illinois, and as the court below held that they were sufficient, the question here presented is whether or not these papers are sufficient to cause Webster to be returned to Illinois and to be tried, and the all important question aside from any informality in the papers is whether or not in the affidavit setting up the evidence to be relied upon as a basis for holding appellant guilty of the crime under the laws of the State of Illinois it so states a crime. The vice of the decision of the court below is that that court refused to consider the affidavit and the court held that as there was another affidavit in the case charging "a confidence game," that the affidavit in aid of extradition should not be considered. This is contrary to the ruling of this court. In the case of *Hard vs. Splain*, reported in 44 Wash. Law Reporter, page 278, this court had this identical question before them. It had a proper information charging the

offense but it also had the facts that showed that appellant did not come within the information. The court in this case said:

"A criminal complaint was filed before a magistrate in the State of Michigan by one Katherine Hard, charging petitioner with kidnapping one Elizabeth Hard. From the affidavits in support of the complaint, it appears that Elizabeth Hard, the daughter of petitioner, was forcibly taken from the custody of Katherine Hard, her mother, and carried out of the state. The sufficiency of the complaint is assailed by counsel for petitioner, but we think it unnecessary to inquire into the objections, since they relate to defect of pleading rather than to a total failure to charge a crime under the statute of Michigan relating to kidnapping. The rule in extradition cases, applicable here, is stated in *Pierce vs. Creecy*, 210, U. S., 387, as follows: 'The only safe rule is to abandon entirely the standard to which the indictment must conform, judged as a criminal pleading, and consider only whether it shows satisfactorily that the fugitive has been in fact, however inartificially, charged with crime in the State from which he has fled.'

"The serious question presented by this record is, whether or not what petitioners did constituted the crime charged? To determine this the court will look beyond the mere sufficiency of the complaint as a criminal pleading. In extradition, it must appear as a condition precedent to the issuance of a warrant that the person demanded is substantially charged with a crime against the laws of the State from which he is alleged to have fled. This is a question of law always open to inquiry on an application for a writ of habeas corpus. *Hyatt vs. Corkran*, 188 U. S., 691."

And this opinion of the court is sustained by other authorities.

The great weight of authority is that in habeas corpus proceedings a judge or tribunal may go behind the executive warrant and examine into the sufficiency of the indictment or complaint upon which the requisition is based and warrant issued, and in case the indictment or affidavit of complaint does not legally charge a crime, or is fatally defective, to discharge the prisoner.

In re Terrell, 51 Fed., 213.

People vs. Brady, 56 N. Y., 182.

Jones vs. Leonard, 50 La., 106.

In re Mohr, 73 Ala., 503.

People vs. Hyatt, 188 U. S., 691.

Roberts vs. Reilly, 116 U. S., 80.

Tinsley vs. Treat, 205 U. S., 20.

In *Tinsley vs. Treat*, 205 U. S., 20-29, discussing the extent to which a judge may inquire into the sufficiency of the indictment in the matter of extradition, the Supreme Court says:

“It has been held that in such cases the judge exercises something more than a mere ministerial function, involving no judicial discretion. He must look into the indictment and ascertain whether an offense against the United States is charged, find whether there was probable cause and determine whether the court to which the accused is sought to be removed has jurisdiction of the same. The liberty of the citizen and his general right to be tried in a tribunal or forum of his domicile, imposes upon the judge the duty of considering and passing upon these questions.”

In *Pierce vs. Creecy*, 210, U. S., the Supreme Court said:

“The only safe rule is to abandon entirely the standard to which the indictment must conform, judged as a criminal pleading, and consider only whether it shows satisfactorily that the fugitive has been in fact, how-

ever inartificially, charged with the crime in the State from which he has fled.”

Must show fugitive from justice.

Ex parte Reggel, 114 U. S., 642-651.

Roberts vs. Reilley, 116 U. S., 80.

Ex parte Joseph Smith, 3 McLean, 121.

Jones vs. Leonard, 50 Iowa, 106.

In re Mohr, 73 Ala., 503.

State vs. Jackson, 36 Fed., 258.

Hartman vs. Aveline, 63 Ind., 344.

Cook vs. Hart, 146 U. S., 193.

The affidavit must allege that the accused has fled from the justice of Illinois.

* * * * *

Matter of Heyward, 1 Sandford, N. Y., 701.

In re Fetter, 3 Zab. N. J., 311.

In re Cannon, 47 Mich., 481, 485.

In *In re* Cannon, 47 Mich., 481, 485, Justice Campbell said:

“The State of Michigan has no legal powers to demand, and the State of Kansas has no legal power to deliver up any persons but those *charged* as fugitive criminals. The constitutional safeguards on this subject concern the individual’s liberty and not merely the State’s dignity, and no one holds his liberty subject to State comity or on any less tenure than constitutional right.”

The sections of the law of Illinois to be considered in this case are contained in the following sections of the statutes of that State:

Sec. 98. “Confidence game: Every person who shall obtain or attempt to obtain, from any other person or persons, any money or property by means or by use

of any false or bogus checks, or by any other means, instrument or device, commonly called the confidence game, shall be imprisoned in the penitentiary not less than one year and not more than ten years." Page 771 Revised Stat. Ill., 1909. Chapter 38, Criminal code.

Sec. 99. "Confidence game, indictment. In every indictment under the preceding section, it shall be held a sufficient description of the offense to charge that the accused did, on, etc., unlawfully and feloniously obtain or attempt to obtain (as the case may be) from A. B. (here insert the name of the person defrauded or attempted to be defrauded), his money (or property in case it be not money) by means and by use of the confidence game." Chap. 38, section 99.

Sec. 96. "Whoever, with intent to cheat or defraud another, designedly by color of any false token or writing, or by any false pretense, obtains the signature of any person to any written instrument, or obtains from any person any money, personal property or other valuable thing, shall be fined in any sum not exceeding \$2,000.00 and imprisoned not exceeding one year, and shall be sentenced to restore the property so fraudulently obtained, if it can be restored.

No indictment for the obtaining of any property or thing, by any false pretense or pretenses, shall be quashed, nor shall any person indicted for such offense be acquitted for the reason that the facts set forth in the indictment or appearing in evidence may amount to a larceny or other felony, nor shall it be deemed essential to a conviction that the property in the goods or things so obtained shall pass with the possession to the person so obtaining it." Sec. 96, Chap. 38, Crim. Code, Ill. Revised Statutes, p. 770.

Section 97 is a statute peculiar to Illinois, although adopted in a good many of the other States, and reads as follows:

Sec. 97. "Obtaining credit by, for self, firm or corporation. Whoever by any false representation in writing, signed by him, of the respectability, wealth, mercantile correspondence or connections, or assets, or liabilities of himself, or of any firm of which he is a member, or whoever being an officer of the corporation by any false representation in writing known by him to be false, and signed by him, of the respectability, wealth, mercantile correspondence or connections or the assets or liabilities, or any or all of them, of such corporation, obtains credit for himself for such firm or corporation, and thereby defrauds any person of money, goods, chattels, or any valuable thing, or whoever procures another to make a false report, in writing, signed by the person making the same, of the honesty, wealth, mercantile correspondence or connections, or assets or liabilities of himself or of any firm, of which he is a member, or whoever, being an officer of a corporation, procures another to make a false report in writing, known by him to be false, signed by the person making the same, of the honesty, wealth, mercantile correspondence or connections, or assets or liabilities of such corporation, and thus obtains credit for himself, for such firm or for such corporations and thereby defrauds any person of any money, goods, chattels and other valuable things, shall be sentenced to return the money or property so fraudulently obtained, if it can be done, and shall be fined not exceeding \$2,000.00 and confined in the county jail not exceeding one year."

Sec. 97.

An examination of this section shows that the affidavit in aid of extradition does not state an offense under section 98, the one under which Webster is charged. That section provides that every person who shall obtain or attempt to obtain, from any other person or persons, any money or property by means or by use of any false or bogus checks, or by any other means, instrument or device, commonly called the confidence game, shall be imprisoned in the penitentiary not

less than one year, or not more than ten years. Section 99 is a section of procedure stating what is a sufficient charge of the offense under section 98. Section 96 refers to the intent to cheat or defraud another designedly by color or any false token or writing, or by any false pretense obtains the signature of any person to any written instrument, or obtains from any person any money, personal property, or other valuable thing. No attempt is made to prosecute the appellant under this section because section 97 takes from out of this section any false statement or representation as to wealth, mercantile correspondence or connections or assets, it being required by section 97 that where the credit has been obtained by one for self, firm or corporation, the false representation must be in writing signed by him, and as the affidavit in aid of extradition shows that all the statements alleged to have been made by Webster were oral, he does not come within this section.

The question here now involved has been considered by the Supreme Court of the State of Illinois, in favor of appellant, and can not be questioned. In the case of *Pierce vs. People*, 81 Ill., 98, the identical question raised here was considered by the court and the court held that the acts in that case did not bring the party within section 98, but within section 96, and not being written no prosecution could be had. The court said:

“The whole case, in our opinion, is narrowed down to this; is obtaining credit, by false representation, in regard to the party's solvency, within the contemplation of the statute? The exhibition of the letter heads, business cards, draft, or copy of draft, and the making of the note, payable at a particular bank, as well as the drawing of the orders on the different firms, were intended to inspire belief of the defendant's ability to pay, precisely as were his oral declarations. They were, at most, but false representations, designedly made, of

his solvency, for the purpose of obtaining credit. Their only effect was to inspire confidence in his financial integrity, and the money and property he obtained were given him, not simply because of those documents or representations, for there was no exchanging of the one for the other, but because of this confidence he had inspired.

The language of the statute does not expressly extend to cases of money or property, obtained on the belief of the ability and disposition of the party to thereafter make payment; but it contemplates a transaction in which the 'means or device' instead of being the cause of the cause, is the direct or proximate cause of obtaining the money or property; and, being, a highly penal statute, we are not authorized to extend its meaning by implication.

Any doubt which we might otherwise have entertained, as to the correctness of this construction, is excluded by reference to other legislation on the same subject. By the 152nd section of the Criminal Code as revised in 1845 (Rev. Stat., 1845, p. 178) it was enacted, 'If any person by false representations of his own respectability, wealth, or mercantile correspondence and connections, shall obtain a credit thereby, defraud any person or persons of money, goods, chattels or any valuable thing, or if any persons shall cause or procure others to report falsely of his honesty, wealth or mercantile character, and by thus imposing upon any person or persons, obtain credit, and thereby fraudulently get into possession of goods, wares and merchandise, or any valuable thing, every such offender shall be deemed a swindler, and, on conviction, shall be sentenced to return the property so fraudulently obtained, if it can be done, and shall be fined not exceeding \$1,000 and imprisoned not exceeding six months.'

In consequence of abuses, as was supposed, resulting from prosecutions under this section, the General Assembly in 1857, enacted that it should only apply to representations "which shall have reduced to writing and signed by the party to be charged thereby, prior to

obtaining such credit.' Laws of 1857, p. 103, Sec. 2. And in the revision of 1874, the main features of the section, as thus amended, are retained, with the addition to the penalty of allowing the fine to be \$2,000.00, instead of \$1,000.00, and the confinement in the county jail one year, instead of six months. See Revised Laws of 1874, p. 366, sec. 97."

Again in the case of *Lucas vs. People*, 75 Ill., Ap. 662, the court said:

"In the view taken by us, it is unnecessary to consider in this opinion any of the alleged errors except the refusal of the court to quash the indictment.

It is claimed by the State's attorney that the indictment is based upon the section 96 of our Criminal Code, the first section relating to false pretenses. Hurd's Revised Statutes, 564.

It is contended by the plaintiff in error that the charge made against him in the indictment is obtaining credit from Mrs. Metcalf by means of false representations as to his solvency, whereby she was defrauded of her money, and that such an offense falls within section 97 and not within section 96 of the Criminal Code under the heading of 'False Pretenses.'

Under the heading of 'False Pretenses,' section 96 provides that 'Whoever, with intent to cheat or defraud another, designedly * * * by any false pretense obtains the signature of any person to any written instrument, or obtains from any person any money, personal property or valuable thing, shall be fined,' etc. Section 97, provides that 'Whoever, by any false representations in writing, signed by him of his own respectability, wealth or mercantile correspondence or connections, obtains credit and thereby defrauds any person of money, goods, chattels, or any valuable things * * * shall be sentenced, etc.'

It is clear that a good indictment for obtaining credit by means of false representation must aver that the false representation was in writing.

The turning point as to this indictment, therefore, is as to whether the transaction between the plaintiff in error and Mrs. Metcalf was the obtaining of credit from her, or was it an offense coming within the contemplation of section 96.

If it was the obtaining of credit, although the effect of it was to defraud her of her money, it would not be an offense under section 96, because the legislature has specifically made the obtaining of credit by false representation an offense under the other section.

That is practically conceded by the State's attorney. He, contends however that 'Primarily, Mr. Lucas obtained from Mrs. Metcalf money, and not credit.'

But the money was obtained by means of and a result of the credit. The word credit, derived from the Latin *credere*, to trust, is here used in its commercial sense. It is the confidence reposed in the ability and intention of a purchaser or borrower to make payment at some future time, either specified or indefinite. When a merchant sells his wares upon an expressed or implied promise that the purchaser will pay for them at some future time, he gives credit. When the banker or broker lends money upon the promise of the borrower to repay it at some future time, he thereby gives credit. It may be given because of the reputation or representations for solvency and honesty of the purchaser or borrower or because of tendered and approved security. It is against the obtaining of it by false representation, whereby the seller or lender is defrauded of his money or goods that section 97 is directed.

The State's attorney contends that section 97 was intended to apply to cases where credit was sought and obtained in mercantile transactions, as between customer and merchant, retailer or jobber, and the like—and that it should be confined to such cases. Such construction would do great violence to the language employed, and, as we conceive, to the spirit of the legislation. As we view it, the proper construction to place upon the two sections, is that section 96 was intended to

include cases where the defrauded party parted with his money in some other sense than as a loan, and that where the loan was procured by the false representations of the borrower as to his solvency, the case falls within section 97, provided the representation was in writing of course.

In this case Lucas, by his false representations, caused Mrs. Metcalf to repose confidence in his solvency.

By falsely representing his 'wealth' he 'obtained credit' from her. His false representation as to his solvency and ownership of real estate was made for the purpose of 'obtaining credit.' "

In the case of Breckenfeld vs. People, 91 Ill., 400, the court at page 403 construes the 97 section and held that a false representation in writing as to the financial condition of a firm included a member of the firm. The court said:

"It is, we think, true that credit extended or the money paid to the firm is extended and paid to them as individuals as well as jointly."

The case of Maxwell vs. People, 158 Ill., 248, is not applicable to the question here raised. That case merely decides that section 99 being a procedure act to enforce section 98 of the criminal code of Illinois is constitutional.

For these reasons it is respectfully submitted that the judgment below should be reversed and case remanded with instructions to grant the Writ of Habeas Corpus and discharge the appellant from the custody of the U. S. Marshal.

DANIEL W. BAKER,

FREDERIC R. WHIPPLER,

Attorneys for Appellant.

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In the Court of Appeals of the District of Columbia.

OCTOBER TERM, 1916.

No. 2943.

No. 5, Special Calendar.

LEWIS H. WEBSTER, APPELLANT,

vs.

MAURICE SPLAIN, U. S. MARSHAL IN AND FOR
THE DISTRICT OF COLUMBIA, APPELLEE.

BRIEF FOR APPELLEE.

Statement of the Case.

Lewis H. Webster, appellant, filed January 6, 1916, in the Supreme Court of the District of Columbia, a petition for the writ of habeas corpus (Rec., 1, 2). In his petition, appellant averred that he was then detained by Maurice Splain, United States Marshal in and for the District of Columbia, in virtue of a warrant based on certain requisition papers. The requisition in question was

made by the Governor of the State of Illinois, requiring the delivery up of the appellant, to an agent of that State, to be conveyed to Illinois, there to be dealt with according to law.

The appellant, in his petition, questioned the sufficiency of the charge of crime against him, contained in the requisition, and made that alleged insufficiency the basis of his contention that he should be discharged from custody.

The appellee, Splain, made return to the petition (Rec., 3, 4), and to the return, appellant demurred (Rec., 4, 5). Counsel for appellant did not include in his designation of record the original requisition, so that it does not appear in the printed transcript, but we will state that the original requisition was defective in a formal particular, namely, it was addressed to the Chief Justice of the *District of Columbia*; that it was so addressed, is shown in the second paragraph of the amended return (Rec., 5). Due to the informality referred to, the Governor of the State of Illinois forwarded an amended requisition to the Chief Justice of the *Supreme Court* of the District of Columbia, requiring the delivery up of the appellant, to an agent of the State of Illinois, to be conveyed to that State, there to be dealt with according to law. The original requisition does not appear either in the record as originally printed, or in the addition thereto. However, the amended requisition is contained in the "Addition to record per stipulation of counsel," filed by appellant as a part of the record herein. On receipt of the amended requisition above referred to, it was, by the amended return to the writ for habeas corpus (Rec., 5, 6), made a part of the proceedings in the Supreme Court of the District. The appellant demurred to the amended return

(Rec., 7), by his demurrer questioning the sufficiency of the charge of crime against him contained in the amended requisition. On January 28, 1916, the matter came on for hearing, after which the court entered the order (Rec., 7, 8), as follows:

"This cause coming on to be heard on the return to the writ of habeas corpus heretofore issued, and the demurrer to the return, filed on behalf of the petitioner and the amended return to the writ of habeas corpus, and the demurrer to the amended return, filed on behalf of the petitioner, and the same having been argued by counsel and considered by the court, and it appearing to the court by the amended return that a valid requisition has been duly made by the Governor of the State of Illinois upon the Chief Justice of the Supreme Court of the District of Columbia, and that the discharge of the petitioner, Lewis H. Webster, would have no other effect than to occasion the rearrest of said petitioner upon the requisition last referred to, whereupon it would be the duty of the court to remand the petitioner, it is, by the court, this twenty-eighth day of January, 1916, ordered, adjudged, and decreed that the said demurrers in this cause be, and the same are hereby, overruled, and the said petitioner, Lewis H. Webster, be, and he hereby is, remanded to the custody of the Marshal of the District of Columbia, and the said petition for habeas corpus dismissed.

ASHLEY M. GOULD, *Justice.*"

From the foregoing order, dismissing his petition for the writ of habeas corpus and remanding him to the custody of the Marshal, the appellant has appealed to this court.

The complaint upon which the requisition papers are based ("Addition to record per stipulation of counsel," 4) is as follows:

"The Municipal Court.
Complaint for Examination.
 In the Municipal Court of Chicago.

STATE OF ILLINOIS, }
 City of Chicago, } ss.

Frank G. Clark, of 160 W. Jackson Boul. Street, Chicago, Ill., complains to Arnold Heap, one of the Judges of The Municipal Court of Chicago, and being duly sworn and examined on oath, states that L. H. Webster did on the 17th day of December, A. D. 1915, at the City of Chicago in the County aforesaid, unlawfully and feloniously did obtain from Frank G. Clark, this complainant, 350 140-pound sacks of flour of the value of Eleven Hundred and Ninety and no/100 (\$1,190.00) Dollars, the personal goods, chattels and property of the said Frank G. Clark, by means and by use of the confidence game, contrary to the form of the statute in such cases made and provided and against the Peace and Dignity of the people of the State of Illinois.

This complainant further says that he has just and reasonable grounds to believe and does believe that said L. H. Webster committed said offense.

Wherefore, the said Frank G. Clark prays a warrant may issue against the said L. H. Webster according to law.

FRANK G. CLARK.

Subscribed and sworn to before me this 30th day of December, A. D. 1915.

ARNOLD HEAP,
Judge of the Municipal Court of Chicago.

I have examined the within complaint and the complainant and am satisfied that there is probable cause for filing the same. Leave is hereby granted to file it, and it is ordered that a warrant issue against the accused.

Bailed fixed at \$3,000.

ARNOLD HEAP,
Judge of the Municipal Court of Chicago."

ARGUMENT.

I.

IS THERE A SUFFICIENT CHARGE OF CRIME?

The only subject of inquiry presented by this appeal is whether the papers forming the basis of the requisition contain a sufficient charge of crime under the laws of the State of Illinois.

In the consideration of that inquiry it is first necessary to examine the Illinois law relating to the matter.

Sections 98 and 99 of Chapter 38, Hurd's Revised Statutes of Illinois, 1912, are, respectively, as follows:

Confidence Game.—"Every person who shall obtain, or attempt to obtain, from any other person or persons, any money or property, by means or by use of any false or bogus checks, or by any other means, instrument or device, commonly called the confidence game, shall be imprisoned in the penitentiary not less than one year nor more than ten years."

Confidence Game—Indictment.—"In every indictment under the preceding section, it shall be deemed and held a sufficient description of the offense, to charge that the accused did, on, etc., unlawfully and feloniously obtain, or attempt to obtain (as the case may be), from A B (here insert the name of the person defrauded or attempted to be defrauded), his money (or property, in case it be not money,) by means and by use of the confidence game."

The same provisions are carried into Sections 98 and 99, of Chapter 38, Hurd's Revised Statutes of Illinois, 1915-1916.

The complaint is based on the Illinois statute just quoted, defining and making punishable the "confidence game," and stating, in *precise terms*, what shall be deemed and held to be a sufficient description of that offense in an indictment therefor.

We begin, then, with a statute of the State of Illinois, defining and making punishable the crime of "confidence game"; next we have a complaint based on the statute, and charging L. H. Webster with the crime of "confidence game," with the certainty necessary in an indictment for the offence, as the essentials of such an indictment are set out in Section 99 of the statute. That this is so is shown by the indictment in *Morton v. The People*, 47 Illinois, 468, 469, which we quote:

"The record, after the caption, commences as follows:

Be is remembered, that on the 18th day of March, 1868, the following indictment was filed, to-wit:

STATE OF ILLINOIS, }
 St. Clair County, } *ss.*

Of the March term of the St. Clair Circuit Court, in the year of our Lord 1868.

The Grand Jurors chosen, selected and sworn, in and for the county of St. Clair, State of Illinois, upon their oaths present, that Thomas Morton and James Stewart did, on the 18th day of February, in the year of our Lord one thousand eight hundred and sixty-eight, in the county of St. Clair aforesaid, unlawfully and feloniously obtain from one Daniel Hughes thirty dollars of his money, by means and by use of the confidence game, contrary to the form of the statute in such case made and provided, and against the peace and dignity of the people of the State of Illinois.

And the jurors aforesaid, in the name and by the authority aforesaid, upon their oaths aforesaid, do further present that Thomas Morton and James Stewart, on the day and year aforesaid, and in the county aforesaid, did unlawfully and feloniously obtain from Daniel Hughes one United States legal tender treasury note, for the payment of ten dollars and of the value of ten dollars, one bank note for the payment of ten dollars and of the value of ten dollars, and two bank notes for the payment of five dollars each and of the value of five dollars each, the personal property then and there of the said Daniel Hughes, by means and by use then and there of the confidence game, contrary to the form of the statute in such case made and provided, and against the peace and dignity of the people of the State of Illinois.

J. B. HAY,
States Attorney.

On the back was written, 'A true bill, Vital Jarrot, foreman,' and then followed the names of three witnesses for the prosecution."

The above indictment was attacked because it did not set out the elements constituting the offense, and, further, because the second section of the act was unconstitutional.

The court, however, sustained the indictment and said, in part:

“The nature and character of the so-called confidence game, has become popularized in most of the cities and large towns, and even in the rural districts, of this broad Union, and is well understood, and this defendant was distinctly apprized by the indictment of what he was called upon to defend. The accusation is sufficiently identified by the name of the victim. This name must appear in every indictment on this statute, and appearing there, no second indictment for the same offence could be successfully prosecuted. The conviction on this indictment could always be pleaded in bar of a second.”

Appellant, neither in his demurrer to the amended return (Rec., 7), nor in his assignment of errors (Rec., 8), has even suggested that any formality was omitted in the preparation and authentication of the requisition documents, so, to summarize, we have here a requisition duly authenticated, regular and complete in every detail, based upon a complaint (affidavit) which charges (with the certainty of an indictment) L. H. Webster with the crime of “confidence game.” Is there not, then, a sufficient charge of crime?

II.

IT IS SUFFICIENT IF THE FUGITIVE BE SUBSTANTIALLY
CHARGED WITH A CRIME.

In *Pierce v. Creecy*, 210 U. S., 387, there was an appeal directly to the Supreme Court of the United States, from

a judgment of the Circuit Court upon a writ of *habeas corpus*, remanding Henry Clay Pierce to the custody of Edmund P. Creecy, chief of police of the City of St. Louis. The requisition was made by the Governor of the State of Texas upon the Governor of the State of Missouri, requesting the surrender of Pierce, as a fugitive from justice, to an agent of the State of Texas. The requisition was based on an indictment for the statutory crime of false swearing.

Counsel for Pierce contended that the indictment was *fatally defective* for the following reasons:

An indictment alleging merely that the accused made the statement and that it was false is insufficient, not because of any mere rule of pleading, but because of the omission to allege the facts inconsistent with the statements, which facts are part, not merely of the proper statement of the crime, but of the crime itself. In the absence of these facts the allegations that the statement was false is a mere conclusion of the pleader. The facts which constitute the truth, must, therefore, be distinctly alleged, not because they are a requirement of the indictment as a pleading, but because without them the crime of false swearing can be shown only by conclusions.

The assignments of perjury or false swearing, moreover, must not only allege distinctly, and not by way of conclusion, what the true facts were, but must serve to demonstrate the falsity of the facts sworn to. If all that the assignments set out may be true and still be entirely consistent with the truth of the matter alleged to be false, there can be no substantial charge of false swearing, since nothing in the facts alleged would serve to impeach or destroy the truth of the facts sworn to by the accused. If the facts alleged to be true by the assignments of false swearing, and the facts sworn

to by the accused are not inconsistent, the indictment is equivalent to a charge that the accused perjured himself in swearing to statements which were true. The statements alleged to be false and the statements alleged by the assignment to be true must in tenor and meaning be inconsistent so that both cannot by the same tokens of interpretation or inference be true. * * *

The fact that the crime of perjury or false swearing cannot legally be charged without assignments of falsity sufficient within the above reasoning, is perfectly established in Texas. * * * The indictment fails substantially to charge the crime of false swearing, because the statements alleged in the indictment to have been falsely sworn to by the appellant, are not statements of fact, but are expressions of mere opinions, beliefs and conclusions, upon which the crime of false swearing cannot be predicated.

The assignments of falsity are insufficient. No facts are alleged which are necessarily inconsistent with the statements of the appellant's affidavit.

The indictment fails to inform appellant of the charge against him with that degree of reasonable certainty which will enable him to prepare his defense.

The indictment discloses upon its face that, at the time it was filed, the prosecution was barred by the statute of limitations.

The indictment itself discloses the fact that it was not found in good faith.

The indictment is based upon an affidavit required by law, which cannot be the subject of a prosecution for the statutory crime of false swearing.

To the foregoing array of reasons why the indictment was bad and Pierce should not be returned to Texas, the

Supreme Court found an answer. Among other things, that court said:

“But it will not do to disclaim the right to attack the indictment as a criminal pleading and then proceed to deny that it constitutes a charge of crime for reasons that are apt only to destroy its validity as a criminal pleading. * * * We are unable to adopt the test suggested by counsel, that an objection, good if taken on arrest of judgment, would be sufficient to show that the indictment is not a charge of crime. Not to speak of the uncertainty of such a test, in view of the varying practice in the different States, there is nothing in principle or authority which supports it. *Of course, such a test would be utterly inapplicable to cases of a charge of crime by affidavit, which was held to be within the Constitution. In the Matter of Strauss, 197 U. S., 324. The only safe rule is to abandon entirely the standard to which the indictment must conform, judged as a criminal pleading, and consider only whether it shows satisfactorily that the fugitive has been in fact, however, inartificially, charged with crime in the State from which he has fled.*” Page 401 *et seq.* Citing cases. (Italics ours.)

One of the objections was that the affidavit was required by law, and therefore, if false, under the Texas law, it lay the foundation for a prosecution for perjury, but not for false swearing. That objection, in a different form, is the one and only objection to the affidavit in the case at bar, and it is entertaining and instructive to see how the Supreme Court disposed of it. We quote the court's language:

“Under the Texas law the crime of false swearing, as distinguished from perjury, can only be committed by a false oath to a voluntary declaration or affidavit, ‘not required by law or made in the course of a judicial proceeding.’ The sixth objection asserts that the affidavit set forth in this indictment was only required by law. But this assertion is in the teeth of the allegation of the indictment, that the affidavit ‘was not then and there required by law nor made in the course of judicial proceedings.’ We cannot inquire into the truth of this allegation, which may present a mixed question of law and fact.” Page 403.

The court discussed the objections to the indictment which were advanced in the argument, and referring to certain of them said that, if well founded, they showed the indictment to be bad, but also said that the Constitution does not require, as an indispensable prerequisite to interstate extradition, that there should be a good indictment, or even an indictment of any kind. It requires nothing more than a charge of crime. The court said that it had held that an affidavit is sufficient, saying (197 U. S., 331), “doubtless the word ‘charged’ was used in its broad signification to cover any proceeding which a State might see fit to adopt, by which a formal accusation was made against an alleged criminal.”

The court said:

“Let it be assumed, without decision, that the false statements contained in the affidavit were statements of opinion; that the assignments of falsity were bad, because no facts necessarily inconsistent with them were alleged; that the certainty required in criminal pleading was not observed;

and that the time alleged antedates the indictment by more than the period of the statute of limitations. Nevertheless, the indictment alleges that on a day named the petitioner deliberately and willfully made, under the sanction of an oath, legally administered, a voluntary false statement and declaration in writing, to wit, the affidavit, and that the affidavit was not required by law or made in the course of a judicial proceeding. The indictment, whether good or bad, as a pleading, unmistakably describes every element of the crime of false swearing, as it is defined in the Texas Penal Code, in art. 209." Page 404.

The court concluded its opinion with the following significant words, to which we respectfully invite this court's attention :

"This court, in the cases already cited, has said, somewhat vaguely but with as much precision as the subject admits, that the indictment, in order to constitute a sufficient charge of crime to warrant interstate extradition, need show no more than that the accused was substantially charged with crime. This indictment meets and surpasses that standard, and is enough. If more were required it would impose upon courts, in the trial of writs of *habeas corpus*, the duty of a critical examination of the laws of States with whose jurisprudence and criminal procedure they can have only a general acquaintance. Such a duty would be an intolerable burden, certain to lead to errors in decision, irritable to the just pride of the States and fruitful of miscarriages of justice. The duty ought not to be assumed unless it is plainly required by the Constitution, and, in our opinion, there is nothing in the letter or the spirit of that instrument which requires or permits its performance." Page 404 *et seq.*

We contend that the complaint in the case at bar shows the accused to be substantially charged with crime in Illinois, and we further contend that that is sufficient under the authorities to require his prompt return to Illinois, to be there dealt with according to the law of that State.

In the Matter of Strauss, 197 U. S., 324, Strauss was charged by affidavit before a justice of the peace of Youngstown township, Ohio, with the crime of obtaining four hundred dollars' worth of jewelry at Youngstown, Ohio, by false pretences, contrary to the law of that State. He was arrested as a fugitive from justice in New York, and resisted being returned to Ohio, on the ground that the charge of crime, in which extradition is sought, must be pending in a court authorized to try the defendant, and not merely before a committing magistrate who can only discharge or hold for another tribunal.

The Supreme Court not only overruled this contention, but in the course of its opinion, said :

“The Constitution provides for the surrender of a person charged with treason, felony or other crime. The statute prescribes the evidence of the charge to be produced, to wit: ‘A copy of an indictment found or an affidavit made before a magistrate * * * charging * * * treason, felony, or other crime.’ ” Page 331.

The court further said :

* * * an extradition is simply one step in securing the arrest and detention of the defendant. And these preliminary proceedings are not completed until the party is brought before the court in which the trial may be had. *Why should the State be put to the expense of a grand jury*

and an indictment before securing possession of the party to be tried? It may be true, as counsel urge, that persons are sometimes wrongfully extradited, particularly in cases like the present; that a creditor may wantonly swear to an affidavit charging a debtor with obtaining goods under false pretences. But it is also true that a prosecuting officer may either wantonly or ignorantly file an information charging a like offense. But who would doubt that an information, where that is the statutory pleading for purposes of trial, is sufficient to justify an extradition? Such possibilities as these cannot be guarded against. While courts will always endeavor to see that no such attempted wrong is successful, on the other hand care must be taken that the process of extradition be not so burdened as to make it practically valueless. It is but one step in securing the presence of the defendant in the court in which he may be tried, and in no manner determines the question of guilt." Page 332, *et seq.* (Italics ours.)

In *Ex Parte Reggel*, 114 U. S., 642, the Supreme Court said, at page 651:

"It is sufficient for the purposes of the present case to say that, by the laws of Pennsylvania, every indictment is to be deemed and adjudged sufficient and good in law which charges the crime substantially in the language of the act of assembly prohibiting its commission and prescribing the punishment therefore, or, if at common law, so plainly that the nature of the offence charged may be easily understood by the jury; and, that the indictment, which accompanied the requisition of the governor of Pennsylvania, does charge the crime substantially in the language of her statute. That Commonwealth has the right to establish the forms

of pleadings and process to be observed in her own courts, in both civil and criminal cases, subject only to those provisions of the Constitution of the United States involving the protection of life, liberty and property in all the States of the Union."

In *Commonwealth of Kentucky v. Dennison*, 24 Howard, 66, the Supreme Court said, at page 107:

"The question which remains to be examined is a grave and important one. When the demand was made, the proofs required by the act of 1793 to support it were exhibited to the Governor of Ohio, duly certified and authenticated; and the objection made to the validity of the indictment is altogether untenable. Kentucky has an undoubted right to regulate the forms of pleading and process in her own courts, in criminal as well as civil cases, and is not bound to conform to those of any other State. And whether the charge against Lago is legally and sufficiently laid in this indictment according to the laws of Kentucky, is a judicial question to be decided by the courts of the State, and not by the Executive authority of the State of Ohio."

In *Pearce v. Texas*, 155 U. S., 311, Pearce was extradited from Texas to Alabama. He went, but before going, he resisted rendition, as is usual with persons who answer to the characteristics of fugitives from justice, and contended that the indictments were wholly void under Alabama law, because no time or place were laid therein, and it did not appear where the offenses were committed, nor that they were not long since barred. In effect Pearce relied for his discharge entirely upon the invalidity of the indictments. The Texas court remanded

Pearce for removal to Alabama, upon the substantial ground that a court trying a *habeas corpus* case will not discharge the relator because of substantial defects in the indictment under the laws of the demanding State, for that to require this would entail upon the court an investigation of the sufficiency of the indictment in the demanding State, whereas the true rule is, that if it appears to the court that he is charged by an indictment *with an offense*, all other prerequisites being complied with, the applicant should be extradited. On writ of error, the Supreme Court of the United States affirmed the action of the Texas court, and, among other things, said:

“Its action in that regard simply remitted to the courts of Alabama the duty of protecting the accused in the enjoyment of his constitutional rights, and if any of those rights should be denied him, which is not to be presumed, he could then seek his remedy in this court.” Page 314.

And the Supreme Court, in making this decision, could not have overlooked the fact that in a Federal jurisdiction an indictment must allege both time and place. *Ledbetter v. United States*, 170 U. S., 606.

In *Compton v. Alabama*, 214 U. S., 1, it was held that an affidavit before a notary public is sufficient under section 5278, United States Revised Statutes, upon which to base a demand for return of a fugitive from justice if such officer is, as he is regarded in Georgia, a magistrate under the laws of the State.

In *McNichols v. Pease*, 207 U. S., 101, Mr. Justice Harlan, in writing the opinion of the court, sustaining the extradition of McNichols, took occasion to review the leading principles governing interstate rendition as de-

duced from Supreme Court decisions on the subject, and in conclusion reiterated the view of the Supreme Court that a *faithful, vigorous enforcement* of the constitutional and statutory provisions relating to fugitives from justice is *vital to the harmony and welfare of the States*. We quote the court's words:

"We may repeat the thought expressed in Apple-
yard's case, above cited, that a faithful, vigorous
enforcement of the constitutional and statutory
provisions relating to fugitives from justice is vital
to the harmony and welfare of the States, and that
'while a State should take care, within the limits
of the law, that the rights of its people are pro-
tected against illegal action, the judicial authorities
of the Union should equally take care that the pro-
visions of the Constitution be not so narrowly in-
terpreted as to enable offenders against the laws
of a State to find a permanent asylum in the terri-
tory of another State.'" Page 112. (Italics
ours.)

See also, *Ex parte Graham*, 216 Fed., 813.

In *Roberts v. Reilly*, 116 U. S., 80, 96, there was an objection to the sufficiency of the indictment.

"The indictment in question sufficiently charges the substance of a crime against the laws of New York. The objection to it, that it does not appear that the Bethlehem Iron Company, averred to be the owner of the property the subject of the larceny charged, is a person capable in law of such ownership, is not matter of law arising upon the face of the indictment, *but can arise only at the trial upon the evidence*, if the question should then be made. The averment in the

indictment is the allegation of a fact which does not seem to be impossible in law, and is, therefore, traversable." Page 96. (*Italics ours*).

The court overruled the foregoing objection, together with all the others in the case, and directed that the order and judgment of the District Court, remanding Roberts to the custody of the agent of the State of New York, be executed.

Also, in the Roberts' case, the court stated the prerequisite as to the charge of crime, in interstate rendition, to be that it must appear to the governor of the State to whom such a demand is presented, before he can lawfully comply with it. The person demanded is substantially charged with a crime against the laws of the State from whose justice he is alleged to have fled, by an indictment or *affidavit*, certified as authentic by the governor of the State making the demand.

In *Appleyard v. Massachusetts*, 203 U. S., 222, Mr. Justice Harlan wrote the unanimous opinion of the court. He said that a person charged by indictment, *or by affidavit* before a magistrate with the commission within a State of a crime *covered by its laws*, and who, after the date of the commission of such crime leaves the State, is a fugitive from justice, and if found in another State must be delivered up by the governor of such State to the State whose laws are alleged to have been violated, on the production of such indictment *or affidavit*, certified, as authentic by the governor of the State from which the accused departed.

"Such is the command of the supreme law of the land, which may not be disregarded by any

State. The constitutional provision relating to fugitives from justice, as the history of its adoption will show, is in the nature of a treaty stipulation entered into for the purpose of securing a prompt and efficient administration of the criminal laws of the several States—an object of the first concern to the people of the entire country and which each State is bound, in fidelity to the Constitution to recognize. A faithful, vigorous enforcement of that stipulation is vital to the harmony and welfare of the States. And while a State should take care, within the limits of the law, that the rights of its people are protected against illegal action, *the judicial authorities of the Union should equally take care that the provisions of the Constitution be not so narrowly interpreted as to enable offenders against the laws of a State to find a permanent asylum in the territory of another State.*" Page 227, *et seq.* (Italics ours.)

It will further be noted that the learned Justice made it clear that Appleyard's reliance on *Hyatt v. Corkran*, 188 U. S., 691, was unfounded, by showing that the discharge of the relator in that case from imprisonment was because he was not in the State of Tennessee at the times stated in the indictment found in the Tennessee Court, nor at any time when the acts were, if ever committed, and that, therefore, he was not a fugitive from justice within the meaning of the Federal statute upon the subject.

In *Drew v. Thaw*, 235 U. S., 432, the Supreme Court said that the most serious argument on behalf of Thaw is that if he were insane when he contrived his escape he could not be guilty of crime (Thaw was indicted for conspiracy), while if he was not insane he was entitled

to be discharged, but the court said "this is not Thaw's trial," and then went on to point out that the purpose of the writ of *habeas corpus* is not to "substitute the judgment of another tribunal upon the *facts* or the *law* of the matter to be tried." Page 439 (Italics ours). We regard this language as being vitally important and binding in all Federal courts.

The court also said:

"The Constitution says nothing about *habeas corpus* in this connection, but peremptorily requires that upon proper demand the person charged shall be delivered up to be removed to the State having jurisdiction of the crime. Article 4, section 2. *Pettibone v. Nichols*, 203 U. S., 192, 205. There is no discretion allowed, no inquiry into motives. *Kentucky v. Dennison*, 24 How., 66; *Pettibone v. Nichols*, 203 U. S., 192, 203. *The technical sufficiency of the indictment is not open. Munsey v. Clough*, 196 U. S., 364, 373." Page 439. (Italics ours.)

In *Webb v. York*, in the Circuit Court of Appeals, Eighth Circuit, 79 Fed., 616, the court, speaking of the substance of the affidavit on which the requisition was based, said:

"In the present case the requisition was accompanied by an affidavit duly authenticated, *which at least attempted* to charge Emma York, the appellee, with the crime of embezzlement, committed in the State of California, and the proof laid before the governor of Colorado that she was a fugitive from justice was certainly adequate to warrant him in finding that such was the fact. No reasons are disclosed, therefore,

which would have warranted the governor of Colorado in refusing to honor the requisition, or on account of which the executive warrant which was issued by the governor of Colorado can be held void, unless it be that the affidavit filed in the police court for the city and county of San Francisco, which was attached to the requisition fails to charge a crime. This, we think, is the sole question which deserves notice." Page 620, *et seq.* (Italics ours).

As to this the court said:

"It is well settled that, in so far as the sufficiency of this affidavit is open for consideration in this proceeding, its sufficiency must be tested by the Code of Criminal Procedure of the State of California, rather than by common-law rules. Every State has the right to regulate the forms of pleadings and process in civil and criminal cases, and to determine what shall be deemed a sufficient indictment, information, affidavit, or declaration in its own courts. A requisition for the return of a fugitive from justice cannot be denied when the copy of the indictment or affidavit attached to the requisition is held sufficient by the courts of the State where the offense was committed, although it would not be held good by the courts of the State where the accused has taken refuge. *Ex parte Reggel*, 114 U. S., 642, 651, 5 Sup. Ct. 1148; *Pearce v. Texas*, 155 U. S., 311, 15 Sup. Ct. 116, and cases there cited. The particular objection made to the affidavit charging the appellee with embezzlement, which was filed in the police court of the city and county of San Francisco, seems to be that it did not describe the particular character of the alleged bailment. It is urged that, because the accused was alleged to have embezzled money which she held

as bailee, it was essential to have described the precise character of the bailment, and that because the affidavit fails in this respect it was insufficient, and subject to a demurrer or motion to quash. An early case in California, decided in 1857 (*People v. Cohen*, 8 Cal., 42), supports that view; but since then the Code of Criminal Procedure in that State has been very much changed, and, as we understand later legislation and later decisions in that State, the affidavit in question would now be held sufficient. * * * In the absence of these decisions, we should entertain no doubt that the information or affidavit quoted in the statement charged the offense of embezzlement with sufficient certainty to put the accused on trial, in view of the liberal provisions of the California Code of Criminal Procedure above cited. It must be conceded, we think, that the affidavit charges the commission of an offense with such certainty 'as to enable a person of common understanding to know what is intended,' and that is the test prescribed by the statute." Page 621, *et seq.*

In conclusion, the court used this significant language:

"Aside from these considerations, we think it is the better view that, in a proceeding by habeas corpus, an executive warrant for the arrest of a fugitive from justice should be upheld, when the foreign indictment or affidavit on which it is based is properly authenticated, and charges an offense committed within the foreign State with reasonable fullness and accuracy. In such a proceeding the executive warrant ought not to be pronounced void, merely because of some technical defect in the foreign indictment or affidavit, provided the offense is substantially alleged or described. Such we understand to be the view

that was expressed by the Supreme Court of the United States in *Roberts v. Reilly*, 116 U. S., 80, 94, 95; 6 Sup. Ct., 291, and the same view has been adopted by some other courts. *Ex parte Pearce*, 32 Tex. Cr. App. 301; 23 S. W., 15; *In re Roberts*, 24 Fed., 132; *In re White*, 45 Fed., 237; *In re Keller*, 36 Fed., 681; *Kurtz v. State*, 22 Fla., 36. The order appealed from is accordingly vacated and annulled, and the case is remanded, with directions to enter an order committing the petitioner, Emma G. York, to the custody of the appellant, the sheriff of Arapahoe county, State of Colorado, to be dealt with by him in accordance with the warrant for her apprehension, which was issued by the governor of the State of Colorado." Page 622.

The Circuit Court of Appeals for the First Circuit, in *Chung Kin Tow v. Flynn*, 218 Fed., 64 (decided November 19, 1914), made some observations to which we respectfully invite the court's attention:

"The appellant concedes, upon review by petition for habeas corpus that the warrant of the Governor is prima facie evidence that all necessary legal prerequisites have been complied with, and, if the proceedings before and by the Governor so appear to be regular, it is conclusive evidence of the right to remove the prisoner to the state wherefrom he has fled. ' ' " Page 66.

As to appellant's contention that the facts averred in the requisition record would only prima facie constitute the crime of an assault, or, at most, manslaughter, and failed to set out the facts indicating malice and premeditation. As to this the court said:

"It is true that the petitioner, appellant, cites to us the Revised Laws of Massachusetts, c. 217, Sec. 11, to the effect that the requisition should be 'accompanied by affidavits to the facts constituting the crime charged by persons who have actual knowledge thereof'; and in this connection the petitioner alleges that the facts averred in the requisition record 'would only prima facie constitute the crime of an assault, or, at the most, manslaughter,' and fail to set out the facts indicating malice and premeditation. However, even if this provision of the Massachusetts statute is effectual, the requisition record alleges sufficient, in connection with the common-law presumption that certain facts, unexplained, constitute murder, to meet the demands of this statute, in view particularly of the fact that extradition looks always to summary proceedings, and not to technical details or strict rules of criminal practice or pleading, as is stated in *Munsey v. Clough*, 196 U. S. 364, 372, 25 Sup. Ct. 282, 49 L. Ed. 515." Page 66.

In conclusion, the court said:

"According to the late advances by the Supreme Court towards simplifications in matters of extradition, when we have the authentications of the Governors, we are not required to look into the intricacies of local legislation." Page 67.

As the Supreme Court said, in *Benson v. Henkel*, 198 U. S. 1, 15:

"In conclusion of this branch of the case it may be said that any construction of the law which would preclude the extradition to the District of Columbia of offenders who are arrested elsewhere would be attended by such abhorrent consequences that nothing but the clearest language would au-

thorize such construction. It certainly could never have been intended that persons guilty of offenses against the laws of the United States should escape punishment simply by crossing the Potomac River, *nor upon the other hand that this District should become an Alsatia for the refuge of criminals from every part of the country.*" Page. 15. (Italics ours.)

From this review of the authorities in the Supreme Court and other Federal tribunals, we find in interstate rendition that it is only necessary that the fugitive be *substantially* charged with a crime; that it is sufficient if a crime, however inartificially, be charged. This has been the ruling whenever the question has arisen, and in the process of time the pronouncements of the Federal courts as to the point have taken on added clearness, emphasis, and fixedness. (*Pierce v. Creecy*, 210 U. S. 387; *Pearce v. Texas*, 155 U. S. 311, and *Drew v. Thaw*, 235 U. S. 432, all cited *supra*.) With this clear and definite rule, enunciated by all the Federal tribunals, and particularly by the Supreme Court, as our guide, we have in this case a complaint which charges the appellant Webster with the offence of confidence game with the substantial accuracy of the indictment for the offence, which was approved by the Supreme Court of Illinois in *Morton v. The People*, 47 Illinois, 468, *supra*. In addition, all the formalities of authentication have been complied with. It would seem that this should be sufficient, but appellant insists that he should not be returned to Illinois because he says that what is described as "Affidavit in Aid of Extradition," etc., contains language which shows that what was done by him did not amount to the crime of confidence game. To support this view he cites *Pierce v. The People*, 81 Illinois, 98.

III.

THE FUGITIVE HERE IS CHARGED WITH A CRIME.

The instant case may be readily distinguished from *Hard v. Splain*, 44 Washington Law Reporter, 278. In that case, it appears from the decision that this court held that the statute awarding to the wife, on separation from the husband, the custody of the minor children of the marriage under age of twelve, was not so clearly a remedial statute in derogation of the common law giving the custody of minors to the father, as to be the legal basis on which a criminal prosecution would lie against the father for kidnapping, for that he had taken the child from the mother.

In the instant case the remedial character of the Illinois confidence game statute is apparent, not only in the language of section 98 creating and defining the offence, but in section 99, which prescribes the essentials of an indictment charging a defendant with the crime.

Again, under the Michigan statute there had been no adjudications in that State, treating the statute as a basis for criminal prosecutions.

In the case at bar there have been numerous adjudications under the Illinois statute sustaining convictions thereon.

We propose now to examine *Pierce v. The People* (decided in 1876) and then, in turn, examine the later cases on the subject in Illinois.

In the *Pierce* case the facts, briefly, were as follows: Pierce went to a hotel in East St. Louis, Illinois, and represented himself to be a member of the firm of D. Pierce & Sons, merchants, doing business in St. Louis,

Missouri. Pierce had letter heads and cards showing the firm name and place of business, and the clerk of the hotel, on the strength of Pierce's representations and from having seen the letter heads and cards, accommodated Pierce with a room in the hotel. Some days after Pierce had gotten accommodations he showed the clerk what purported to be a draft on a firm in Newport, Kentucky, for funds in the firm's hands, which Pierce stated belonged to him; it turned out afterwards that what Pierce showed the clerk was but a copy of a draft. Pierce remained at the hotel, getting his meals, drinks, and a loan of money from the clerk, until his bill amounted to some \$18, when the clerk demanded payment. We respectfully invite particular attention to what then occurred. Pierce first gave in payment of his hotel bill his promissory note; when the note was returned protested, Pierce then gave an order signed by himself on a bank, from which order nothing was received; then he gave an order on his son William, but the son could not be found; then he gave the hotel proprietor an order on the Yeager Milling Company for seven barrels of flour, which was not honored, and after that he was arrested, tried and convicted of obtaining the hotel proprietor's property by the confidence game.

In reversing the judgment, the Illinois Supreme Court based its action on the ground that Pierce obtained the money and property, on the belief which he had inspired of his ability and disposition to pay; that Pierce got the property and money "because of this confidence he had inspired;" that the exhibition of letter heads, business cards, draft or copy of draft, and the making of the note and orders were, at most, but false representations, designedly made, of Pierce's solvency for the purpose of

obtaining the property and money; and that his note and orders were received by the hotel proprietor from whom the money and property were obtained, as an evidence of indebtedness, and when and how it was agreed to be paid, and nothing more, and this for the reason that the note and orders were genuine, that is, they bore the defendant's genuine signature, and contained no forged or fictitious endorsements, and consequently were not false, so that the hotel keeper took them on the faith induced by the defendant's representation and upon the faith of the defendant's signature. To sum up: That where a party, after obtaining money and credit, gave his note for the sum due, and afterwards gave an order for the sum he owed, it could not be said that he obtained money or property by the use of the note or order.

In *Chilson v. The People*, 224 Illinois, 535, decided thirty years after the *Pierce* case, where one Chilson was convicted of the crime of confidence game, sentenced to the Joliet penitentiary, and the Illinois Supreme Court affirmed the judgment. The syllabus of the case is as follows:

"Confidence Game—an apparently legal contract may be part of a confidence game. The fact that a contract entered into by one party with no intention of carrying it out but for the purpose of inducing the other to part with his money without adequate consideration is apparently an ordinary partnership agreement to carry on a legitimate business venture does not prevent prosecution of the wrongdoer for the 'confidence game,' upon the ground that he has simply been guilty of a breach of contract."

The facts briefly were: Chilson was employed by one Marden, manager of the Deer Park Improvement Asso-

ciation, in the business of disposing of lots located at a place called Deer Park. Chilson advertised in the Chicago Tribune for a partner with \$300 to go into the real estate business in Milwaukee. Spooner (the victim) saw the advertisement, went to Chicago, and met Chilson at Marden's office. As explained by Chilson to Spooner, his proposition contemplated the formation of a partnership to sell in the city of Milwaukee, lots located in Deer Park, by an arrangement similar to that which Chilson stated had been followed in Chicago—namely, sales through grocers. The two partners were each to invest \$300, and were to purchase six hundred lots at one dollar each from the Deer Park Improvement Association. Chilson explained that it was necessary to have two men interested in the business—one to keep office and the other to call on grocers and to call on those to whom lots had been given, for the purpose of selling them lots adjoining those received by gift. The price of those sold was to be \$25 each. Chilson proposed that he would do the outside work and Spooner would keep the office. Chilson and Marden made “glowing” representations as to the amount of business Chilson had done in Chicago and as to the possibilities of Deer Park as a summer resort, and Marden highly extolled Chilson's honesty and his ability as a salesman. As Spooner objected to putting in \$300, Chilson finally agreed that the firm should start with two hundred lots, which would require each partner to invest \$100 in the purchase of the realty. On March 18, 1903, Chilson and Spooner again met in Marden's office and they agreed with Marden to buy one hundred lots each. Spooner paid \$15 to bind the bargain, went home to prepare to go to Mil-

waukee, and on his return to Chicago paid to Marden the balance of the money due from him. Later Chilson induced Spooner to join with him in the purchase of four hundred additional lots, and Spooner paid to Marden the additional sum of \$200 as his share of the purchase price. Then Chilson and Spooner signed articles of co-partnership providing for the prosecution of the firm business in Milwaukee. Spooner, pursuant to his agreement with Chilson, went to Milwaukee, where Chilson was to meet him. Spooner remained in Milwaukee about a week, "haunting the boat landing and the post-office seeking his partner or communication from him," and then returned to Chicago and attempted to get his money back from Marden. This he was unable to do and he searched in vain for Chilson. Finally, after much correspondence and many promises, Marden took up the deed to the firm, and in settlement of Spooner's demands caused a deed to be made to him individually for three hundred lots in Deer Park. Upon the trial Chilson testified that he was unable to go to Milwaukee on account of the serious illness of his wife.

The principal contention of Chilson in the Supreme Court was that the facts stated did not constitute the offence of confidence game, but the court said:

"We think it clear that Chilson obtained the confidence of Spooner by representing that he would engage in the contemplated business with Spooner as his partner in Milwaukee, and by reason of the confidence so inspired induced Spooner to pay the money to Marden. It is also evident that Chilson did not intend to engage in the business in Milwaukee, and that he falsely pretended he would do so for the purpose of leading Spooner

to pay his money for the lots, which seem to have been of little or no value.

"Chilson says he has been convicted merely 'for a failure to carry out a plain civil contract or for a breach thereof,' and that the distinction between the breach of a contract and the false and fraudulent scheme called the confidence game has been disregarded. If plaintiff in error had entered into the contract in good faith his reasoning would be conclusive. Where a contract apparently legal is entered into by one party with the intention of taking no step to carry it out, but with the wrongful intent of causing the other to part with his money without receiving any adequate consideration therefor, such contract may, *and in this case did, become a mere incident of the 'false and fraudulent scheme.'* The ordinary case of agreeing to sell the gullible one a gold brick now in the possession of the aged Indian presents a breach of a contract, and yet counsel would scarcely pretend that it is for that reason any the less a confidence game. The fact that the affair was made to assume the guise of an ordinary business transaction, whereby, as a preliminary, Spooner was required to pay his money for the lots, is without significance. *It is the substance, and not the form, that is material.* The transaction in question was '*a swindling operation, in which advantage was taken of the confidence reposed by the prosecuting witness in the plaintiff in error,*'—a confidence that had been obtained by deceit and false promises. The case came within the confidence game statute." Page 539, *et seq.* (Italics ours.)

Viewing *Pierce v. The People*, (decided forty years ago), in the light of the clear and explicit decision in *Chilson v. The People*, decided thirty years later, it is

apparent the Pierce case should be treated as overruled and held for naught. Furthermore, if the Illinois Supreme Court could have looked forward to the Webster case now under discussion, it could not, we submit, have made a decision which would more thoroughly cover the Webster case than does its decision in the Chilson case. The "Affidavit in Aid of Extradition," found at page 7 of the "Addition to Record Per Stipulation of Counsel," setting out the circumstances of the confidence game worked by Webster, may be summarized as follows: That one Tatem introduced Webster to Frank G. Clark, the victim; that Tatem represented to Clark that he, Tatem, was desirous of entering into the flour brokerage business with Webster, under the name of L. H. Webster & Company; that Tatem and Webster at that time represented to Clark that Webster was a man of considerable means and owned a large amount of property in the east, when in truth and in fact Webster did not own the property; that at the same time and place Tatem represented that he was the owner of a large amount of property in the east and that Clark would be fully protected for any sales made by him to Webster and Tatem; that in pursuance of such representations Clark sold and delivered to Tatem and Webster, doing business as L. H. Webster & Company, several shipments of flour, with the understanding that it was to be paid for upon payment to them, Tatem and Webster, by the bakers to whom they sold it; that Tatem and Webster, intending thereby to cheat and defraud Clark, thereby obtained his confidence, and that from a period beginning September 22, 1915, Webster and Tatem ordered a large quantity of flour for delivery to bakers throughout the City of Chicago; that Clark made

demand from time to time for payment of said flour, after the delivery of each sale, and was informed by Webster and Tatem that the flour had not been paid for, and that immediately upon receipt of payment therefor Clark would be paid in full, when in truth and in fact the money had been collected and the representations made by Webster and Tatem were false, and after Webster and Tatem had obtained from Clark large shipments of flour, to the value of \$9,000, they represented that certain property of Webster and Tatem would be converted into cash and the account immediately paid; that the flour had been collected for and the money converted to the use of Webster and Tatem; that on December 17, 1915, Webster and Tatem, by means and use of the confidence game, obtained from Clark 350 140-pound sacks of flour, of the value of \$1,190, the personal goods, chattels and property of Clark; that the flour was delivered by Webster and Tatem to Nuti & Company, for which flour Nuti & Company paid Webster and Tatem the sum of \$1,190; that on December 27, 1915, Clark called upon Webster and Tatem and was told that they had not received any money in payment of the flour delivered on December 17th, nor had they received payment for any flour that they had not turned over to Clark, when in truth and in fact the said Webster and the said Tatem had collected some \$9,000, which they had fraudulently withheld from Clark; Clark further says in his affidavit that Webster and Tatem obtained his confidence by misrepresenting their financial standing, and by leading him to believe that they possessed certain property, which in truth they did not possess, and by falsely stating that the flour delivered to them by Clark had not been paid for; that before the

delivery of the 350 140-pound sacks of flour, Tatem told Clark that the certain property of Webster and Tatem had been converted into cash, and that the money was being brought to Chicago by the wife of Webster, and would be deposited in a Chicago bank to the credit of Webster, upon which representation the flour was delivered; that on December 27, 1915, Webster notified Clark that some \$4,500 had been brought from New York by Webster's wife as the proceeds of the sale of Webster's property in the east, and that as soon as the check was cleared Clark would be paid in full, when in truth and in fact no money was brought from New York by Webster's wife, and the statement made by Webster was false and Webster knew it to be false. Clark further states in his affidavit that, in pursuance of Tatem and Webster's endeavor to cheat and defraud him, Clark, by means of the confidence game, Tatem and Webster, on Tuesday, the 28th day of December, 1915, appeared at the Lake View Trust & Savings Bank, in the City of Chicago, and there withdrew several thousand dollars in cash, and fled from the jurisdiction of the State (Illinois).

A cursory reading of the foregoing "Affidavit in Aid of Extradition" shows plainly the creation and operation by Webster and Tatem of a confidence game, within the meaning of the statute and within the late decision of *Chilson v. The People*. In the instant case, Webster and his confederate represented that they were desirous of entering into the flour brokerage business and that they were men of means and each had property in the east; Webster and his confederate agreed that they would pay Clark for the flour, as they received payment for it from the bakers. This they did not do, but, on the other

hand, the affidavit shows that they converted the money paid to them by the bakers for the flour to their own use. Further they represented that certain property of Webster and Tatem would be converted into cash and the account immediately paid. This also was false. Further that before the delivery of the 350 140-pound jute sacks of flour, Tatem told Clark that certain property of Webster and Tatem had been converted into cash and the money was being brought to Chicago by Webster's wife and would be deposited in a Chicago bank to the credit of Clark, upon which representation the said quantity of flour was delivered; that on the 27th day of December, 1915, Webster notified Clark that some \$4,500 had been brought from New York by Webster's wife, as the proceeds of the sale of Webster's property in the east, and that as soon as the check was cleared Clark would be paid in full; when in truth and in fact no money was brought from New York by Webster's wife and Webster's statement was false and he knew it was false. Further, that in pursuance of their intention to cheat Clark, Tatem and Webster, on December 28, 1915, drew from the Lake View Trust & Savings Bank, in the City of Chicago, several thousand dollars in cash and fled from the jurisdiction of the State.

The facts of this case are much stronger in support of the contention that in the requisition papers a crime was charged than were the facts in the Chilson case, upon which Chilson was convicted and the Supreme Court of Illinois affirmed the conviction, in pursuance of which Chilson enjoyed during the time of his sentence that hospitality which the State of Illinois affords to the inmates of the Joliet Penitentiary. We apply to the contract between Webster and his confederate, on the

one hand, and Clark, their victim, on the other, the language which the Supreme Court of Illinois applied to the contract in the Chilson case: "Where a contract apparently legal is entered into by one party with the intention of taking no step to carry it out, but with the wrongful intent of causing the other to part with his money without receiving any adequate consideration therefore, such contract may, and in this case did, become a mere incident of the 'false and fraudulent scheme'." The cunning of Webster and his confederate designed a confidence game, in which the contract was made to assume the guise of an ordinary business transaction, just as, in the Chilson case, where, as a preliminary, Spooner was required to pay his money for the lots. So, in this case, as the preliminary step to the promised payment by Webster and his confederate, Clark delivered to them his flour. Again we quote from the language of the Illinois Supreme Court in the Chilson case:

"It is the substance, and not the form, that is material. The transaction in question was 'a swindling operation, in which advantage was taken of the confidence reposed by the prosecuting witness in the plaintiff in error,'—a confidence that had been obtained by deceit and false promises. The case came within the confidence game statute."

If ever a swindling transaction amounting to the confidence game (denounced by the Illinois statute) occurred in that State, it took place in the confidence game practised by Webster and his confederate, Tatem, upon Clark, their victim, and that what they did to Clark

amounted to the confidence game within the meaning of the Illinois statute, we contend is sustained and more than sustained by the facts and decision thereon in *Chilson v. The People*. In view of the facts and decision of the Illinois Supreme Court in the Chilson case, we are unable to understand how it can be contended, that what Webster and his confederate did to Clark, did not amount to the crime of confidence game.

We are content to rest our position that, in and by the requisition papers in this case, Webster is charged with the crime of confidence game, upon the decision of the Illinois Supreme Court in the Chilson case.

Upon the foregoing facts and the discussion of them in the light of all the authorities, and particularly upon the authority of *Chilson v. The People*, we respectfully submit that the judgment of the Supreme Court of this District, in remanding Webster to the custody of the Marshal, to be returned to the State of Illinois there to be dealt with according to law, is right and should be affirmed.

Respectfully submitted,

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